TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~276.~~ 13

EDWIN A. C. HATCH, PLAINTIFF IN ERROR,

vs.

THOMAS B. CODDINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 29, 1874.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Edwin A. C. Hatch vs. Thomas B. Coddington, impleaded, &c., a manifest error hath happened, to the great damage of the said Edwin A. C. Hatch, as is said and as appears by his complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States, this fourth day of February, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is allowed.
February 4th, 1874.

SAM'L BLATCHFORD, *D. J.*

(Endorsed:) United States circuit court. Edwin A. C. Hatch against Thomas B. Coddington, impleaded, &c. B. F. Rice, atty. for plff. in error, 251 Broadway, N. Y.

Due service of a copy of the within is hereby admitted.
New York, March 5, 1874.

OWEN, NASH & GRAY,
Def'ts Attys.

Filed Mch. 5, 1874.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

b I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one to one hundred and eighty-five, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Edwin A. C. Hatch, plaintiff in error, against Thomas B. Cod-

dington, impleaded, or defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this thirteenth day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-eighth.

[SEAL.] KENNETH G. WHITE, *Clk.*

1 Pleas before the judges of the United States circuit court for the southern district of New York, at the United States court-rooms, in the city of New York, of the term of April, 1869, to wit, the 30th day of June, as yet of April term, A. D. 1869.

Witness the honorable Samuel Blatchford.

KENNETH G. WHITE, *Clerk.*

Memorandum.

EDWIN A. C. HATCH
vs.
THOMAS B. CODDINGTON, IMPLEADED, &C.

SOUTHERN DISTRICT OF NEW YORK,
City & County of New York, ss:

Be it remembered that on the 10th day of June, as yet of April term, 1869, before the justices of the United States circuit court for the southern district of New York, at the United States court-rooms, in the city of New York, comes Edwin A. C. Hatch, who is a citizen of the State of Minnesota, by Edward H. Hawke, his attorney, and brings into court, before the justices aforesaid now here, his certain bill against
2 Thomas B. Coddington, impleaded, &c., of a plea of trespass on the case, which said bill follows in these words, that is to say:

Declaration.

SOUTHERN DISTRICT OF NEW YORK,
City & County of New York, ss:

Of April term, to wit, the 2d day of May, as yet of April term, A. D. 1864.

Edwin A. C. Hatch, who is a citizen of the State of Minnesota, complains of Thomas B. Coddington, who is a citizen of the State of New York, impleaded, &c.—

For that whereas the said Edwin A. C. Hatch heretofore, to wit, on the 13th day of May, 1859, at the city of New York, in the county of New York, and State of New York, was possessed as of his own property of forty-five bonds, or acknowledgements of indebtedness, made and issued by the State of Minnesota, for one thousand dollars each, with interest at the rate of seven per cent. per annum, payable half-yearly, and payable to the order of the Minnesota and Pacific Railroad Company, and by the said Minnesota & Pacific Railroad Company endorsed to bearer, of great value, to wit, of the value of eighty thousand dollars; and being so possessed thereof, he, the said Edwin A. C. Hatch, afterwards, to wit, on the day and year above mentioned, at the city, county, and State of New York aforesaid, casually lost the said forty-five bonds or acknowledgements of indebtedness out of his possession, and the

3 same afterwards, to wit, on the day and year aforesaid, at the city, county, and State of New York, came to the hands and possession of the said Thomas B. Coddington by finding; yet the said Thomas B. Coddington, well knowing the said forty-five bonds or acknowledgements of indebtedness to be the property of the said Edwin A. C. Hatch, and of right to belong and appertain to him, hath not as yet delivered the said forty-five bonds or acknowledgements of indebtedness, or any or either of them, to the said Edwin A. C. Hatch, although often requested so to do, and hath hitherto wholly refused so to do, but afterwards, to wit, on the day and year aforesaid, at the city, county, and State of New York aforesaid, converted and disposed of the said forty-five bonds or acknowledgements of indebtedness to his own use, to the damage of the said Edwin A. C. Hatch of one hundred thousand dollars; and therefore he brings suit, &c.

General issue.

And the said defendant, Thomas B. Coddington, by Owen, Nash & Gray, his attorneys, comes and defends the wrongs and injury when, &c., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him.

And of this he puts himself upon the country.

Defendant's second plea.

And for a further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained, according
4 to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because, he says, that there'fore, to wit, on the 21st day of April, 1859, the Minnesota and Pacific Railroad Company, being the owners and in possession of the forty-five bonds in the declaration described, at New York City, in the southern district of New York aforesaid, delivered the said same to T. B. Coddington & Co., to wit, to the said defendant, as security for the performance of a certain contract made by and between the said Minnesota & Pacific Railroad Company and the said T. B. Coddington & Co.

That afterwards, to wit, on the 20th day of October, 1859, at the city of New York, in the southern district of New York aforesaid, certain differences having arisen between the said Minnesota & Pacific Railroad Company and the said T. B. Coddington & Co. in respect to the said contract and the said bonds so deposited as aforesaid, the said T. B. Coddington & Co, to wit, the defendant herein, together with his copartners, Edward L. Sherman, George L. Nichols, and Henry Nash, as plaintiffs, duly impleaded the said Minnesota & Pacific Railroad Company, in the supreme court of the State of New York, by summons and complaint, according to the course and practice of said court, in a certain
5 action, wherein the said plaintiff demanded judgment for damages against the said Minnesota & Pacific Railroad Company for the non performance, as therein alleged, of their said contract, and that the said bonds should be sold under the direction of the said court on account of such damages. In which said action the said Minnesota & Pacific Railroad Company duly appeared and pleaded by answer to said complaint, according to the course and practice of said court, among other things,

that the said contract was not obligatory upon the said company; that the said bonds had been deposited as aforesaid without the authority of said company, and that the said T. B. Coddington & Co. had not performed the said contract on their part, and had not suffered any damages by reason of the alleged non-performance thereof by said company.

That issue was joined between the said parties by said complaint and answer, and such proceedings were afterwards had in said action, that afterwards, to wit, on the 6th day of November, 1860, at the city of New York, to wit, in the southern district of New York, aforesaid, it was considered and adjudged in and by the said supreme court, among other things, that the said contract had been duly executed and the said bonds deposited as aforesaid by the said Minnesota & Pacific Rail-
6 road Company; that the said T. B. Coddington & Co. had ever been ready and willing to perform the said contract on their part, but that the said company had made default and were liable in damages, and that the said bonds should be sold under the direction of the court, and the proceeds thereof be applied to the expenses of the said proceedings, and to the damages awarded to the plaintiffs in that action, who were authorized by said judgment to bid for and purchase the said bonds at such sale, as more fully appears by the record of the said judgment remaining in the said supreme court, at the city-hall, in the city of New York aforesaid; which said judgment remains in full force, not reversed, satisfied, or vacated. That although it is true that the plaintiff herein, after the execution of said contract and the deposit of said bonds as aforesaid, to wit, on the 13th day of May, 1859, and while they were in possession of the said T. B. Coddington & Co., to wit, of this defendant, did acquire title to and possession of said bonds as against the said Minnesota & Pacific Railroad Company by transfer or sale thereof, made by said company, to wit, by an assignment made by said company on the said 13th day of May, 1859, at Saint Paul, Minnesota, to wit, at the city of New York aforesaid, to one Selah Chamberlain, of the said bonds, as being in the hands of said T. B. Coddington & Co., to wit, of this defendant, and
7 *and* by a like assignment from said Chamberlain to the plaintiff herein, also on the said 13th day of May, 1859; and did, on the 30th day of October, 1860, at the city of New York, in the southern district of New York aforesaid, claiming under said transfers, and alleging that defendant had no right to the possession of said bonds under the contract and deposit aforesaid, demand the said bonds of the said T. B. Coddington & Co., to wit, of this defendant, and this defendant did refuse to deliver the same, which is the same alleged conversion in the declaration herein averred. Yet this defendant avers that the said purchase of said bonds by plaintiff was with full knowledge of the claim of said T. B. Coddington & Co., to wit, of this defendant, to the said bonds under the said contract and deposit, and was subject to such claim; that the said plaintiff had full notice of the said action brought as aforesaid against the said Minnesota & Pacific Railroad Company, but never intervened therein to make any claim to said bonds, and that the plaintiffs in said action, to wit, the defendant herein, never had any knowl edge of the said alleged title of the plaintiff until the said demand, on the 30th day of October, 1860, after the said action had been tried, and upon the eve of judgment being rendered therein. Wherefore the defendant avers that the said plaintiff was in privity with the said
8 Minnesota & Pacific Railroad Company in the defence of said action, and is concluded by the judgment rendered therein, and

estopped from claiming any title to said bonds as against this defendant.

And this the defendant is ready to verify.

Similiter.

And the said plaintiff, by E. H. Hawke, his attorney, as to the plea of the defendant by him first above pleaded, and whereof he hath put himself upon the country, doth the like, &c.

Pltff.'s demurrer to 2d plea.

And the said plaintiff, as to the plea of the said defendant by him secondly above pleaded, saith that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintain'g his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound in law to answer the same; and the said plaintiff states and shows to the court here the following causes of demurrer to the said second plea, that is to say, that it does not appear from the matter contained in the said second plea that the plaintiff is estopped or bound by the said alleged judgment of the supreme court of the State of New York therein set forth. That it is not alleged as matter of fact that the plaintiff was in previty with the said Minnesota & Pacific Railroad Company in the
9 defence of the said alleged action in the supreme court of the State of New York, but the averment to that effect is stated as a conclusion of law from the facts previously alleged, and is, therefore, not traversable; that the said plea amounts to the general issue; and this the said plaintiff is ready to verify.

Wherefore, by reason of the insufficiency of the said second plea in this behalf, the said plaintiff prays judgment and his damages by him sustained on occasion of the committing of the said grievances to be adjudged to him, &c.

Joinder in demurrer.

And the said defendant saith that his said plea, by him secondly pleaded in the above-entitled action, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having or maintaining his said action thereof against him, the said defendant.

And the said defendant is ready to verify and *and* prove the same when, where, and in such manner as the said court shall direct and award. Wherefore, inasmuch as the said plaintiff hath not answered the said plea, nor hitherto in any manner denied the same, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him, the said defendant, &c.

10 *Continuance of the demurrer.*

And because the said court, before the aforesaid justice thereof now here, are not yet advised what judgment to give of and upon the premises, whereof the parties aforesaid have put themselves upon the judgment of the court, a day is given to the parties aforesaid, before the

justices thereof, until the 3d Monday of October, of the term of October, in the year of our Lord one thousand eight hundred and seventy, at the United States court-rooms, in the city of New York, to wit, in the southern district of New York aforesaid.

And the issue above joined upon the plea first above pleaded is ordered to be tried at the circuit court for the southern district of New York, at the United States court-rooms, in the city of New York, on the 3rd Monday of October, 1870.

At which day, before the justices aforesaid, at the United States court-rooms, in the city of New York, to wit, at the southern district of New York aforesaid, come as well the said plaintiff as the said defendant, by their respective attorneys aforesaid.

Judgment on demurrer.

Whereupon, all and singular the premises aforesaid being seen and by the said court here fully understood, the mature deliberation being thereupon had, it appears to the said court here that the said plea
11 by the said defendant secondly above pleaded and the matters therein contained are not sufficient in law to bar and preclude the said plaintiff from having and maintaining his aforesaid action thereof against the said defendant.

And the jurors of the jury, summoned to try the said issue joined upon the plea first above pleaded, being called, also come, who to speak the truth of the matters aforesaid being chosen, tried, and sworn, say upon their oath that the said defendant is not guilty of the premises above laid to his charge in manner and form as the said plaintiff hath above complained against him.

Therefore it is considered that the said plaintiff take nothing by his said bill, but that he be in mercy, &c. And that the said defendant do go thereof without day, &c. And it is further considered by the said court now here that the said defendant do recover against the said plaintiff forty-seven dollars and fifty cents for his costs and charges by him about his defence in this behalf laid out and expended, by the said court now here adjudged to the said defendant, and with his assent, according to the form of the statute in such case made and provided, and that the said defendant have execution thereof, &c.

Judgment signed this seventeenth day of November, 1873.

R. E. STILWELL,
Deputy Clerk.

12 (Endorsed:) U. S. circuit court, southern district of New York. Edwin A. C. Hatch vs. Thomas B. Coddington, impleaded, &c. Judgment record. Owen, Nash & Gray, def'ts. attys. Filed Nov. 17, 1873.

13 United States circuit court.

EDWIN A. C. HATCH, PLAINTIFF,
agst.
THOMAS B. CODDINGTON, IMPLEADED, &C.

Afterwards, to wit, at a circuit court of the United States for the southern district of New York, held at the United States court-room in said district, on the 20th day of December, one thousand eight hundred and seventy, before the honorable Samuel Blatchford, the aforesaid

issue so joined between the said parties as aforesaid came on to be tried by a jury of the said district for that purpose duly empanelled. At which day came there as well the said plaintiff as the said defendant, by their respective attorneys aforesaid, and the jurors of the jury aforesaid empanelled to try the said issue, being called, also came and were then and there in due manner chosen and sworn to try the said issue, and upon the trial of that issue the counsel for the said plaintiff, to maintain and prove the said issue on his part, called James K. Aymar, who, being duly sworn, testified as follows:

I reside in this city, and know the defendant, Mr. Coddington; am a lawyer by profession. I called upon Coddington on behalf of the
14 plaintiff; can't remember the exact date; made memorandum at the time at the request of Judge Barbour; was a clerk in his office at the time. I called on Mr. Coddington, at his office in Broad street, for the purpose of demanding the delivery of certain bonds; think there were forty-five. I demanded forty-five bonds of the State of Minnesota of Mr. Coddington. I produced a writing or order. The papers now shown me are the ones I then had, and are the same as presented, except that I put a memorandum afterwards on it at the time of making the demand. I did not get the bonds. I presented these papers to Mr. Coddington, which was a request to deliver the bonds to me; he refused to deliver them, stating that there had been a cause decided, in which he had sued the railroad company, in his favor, and that the bonds had been directed to be sold. He did not deliver them. I did show him these papers which I have now in my hands. (The witness then produced the paper A, an assignment from the M. & P. R. R. Company to Chamberlain; B, an assignment from Chamberlain to Hatch; C, the order of Judge Barbour.) I think it was the 30th of October, 1860, I made the demand for the bonds. I made it by the direction of Judge Barbour; under that authority. I made a memorandum of this
15 demand at the time. The signature and memorandum on the papers dated 30th October, 1860, is in my handwriting. I can state it more definitely after seeing; as to the demand, I went at the request of Judge Barbour, and as soon as I returned to the office I made this memorandum and signed it.

On cross-examination witness testified: I was clerk at the time in Judge Barbour's office. The name of the firm was Barbour, Lee & Smidt. Our office was at No. 10 Wall street. They had been attorneys in this suit I spoke of. They were attorneys of the Minnesota & Pacific Railroad Company. I know about that suit, as being in the office. I was clerk in the office, and had the general knowledge, of course. I first went as clerk with Lee & Smidt, January 1st, 1854. I remained with them after Judge Barbour joined the firm. I remained with them until May, 1861. I was there from the time this suit was commenced until it was ended. I was a managing clerk in the office. I cannot say that I did see Judge Barbour write this order which belongs on the paper marked "C." I know that it is his handwriting. I am familiar with it. I can't swear that the first time I saw those papers was the day they were handed to me to make this demand. I have no recollection of ever seeing them before.

RENSSELEAR R. NELSON, for plaintiff, being sworn, testified as follows:

16 I am United States district judge for the district of Minnesota. I have occupied that position since 1858. I was at one time vice-president and acting president of the Minnesota & Pacific

Railroad Company. I think I am acquainted with the handwriting of Mr. Rice & Mr. James W. Taylor, who appears to have been the secretary. I am acquainted with the handwriting of Selah Chamberlain. The signature, S. Chamberlain, on paper (Exhibit B) is in his handwriting. That paper marked "A" is signed by Edmund Rice, president. That is his signature. It is attested by James W. Taylor, the secretary, and that is the signature of Mr. Taylor. Mr. Rice was president of the company at the time Mr. Taylor was secretary. I could not give any testimony as to whether this is the seal that was then the seal of that railroad company, (referring to seal on the document.) I have forgotten. Mr. Taylor resided at St. Paul. I think he is now consul at Manitoba, Lake Winnepeg, on the Red River of the North. There was a meeting of the board of directors before the execution of that paper—several meetings of the board for several days previous to the execution. There were meetings of the directors for several days previous.

EDMUND RICE, for the plaintiff, being sworn, testified as follows:

17 I was president of the Minnesota & Pacific Railroad Company on the 13th of May, 1859. I did as president execute the paper marked "A." The seal I find on that paper is the seal of the Minnesota & Pacific Railroad Company affixed to that paper by an officer of that company, by the secretary, Mr. Taylor, and myself.

On cross-examination witness testified:

I was president of this company from the 27th of May, 1857, to the 31st December, 1861. I don't know as there has been any successor to me as president. The company has never had any meeting since that time. It was claimed on the part of the State that its franchises were forfeited to the State. It is practically defunct. Judge Nelson was vice-president of that company during the same period. He acted as president in my absence—not otherwise. He occasionally was in the chair when I was present or about the building, if I was otherwise engaged. He would sometimes act a portion of the day, and I would act the other portion. That is my signature to the paper now produced, and Mr. Taylor's signature, and it is the seal of the company used at that time. I should say it was Mr. Newton's signature. (The paper just produced is marked, for identification, "Exhibit 1.")

The papers were then read in evidence by plaintiff's counsel, as follows:

EXHIBIT A.

18 For value received we, the Minnesota & Pacific Railroad Company, hereby sell, assign, transfer, and set over to Selah Chamberlain and his assigns, forty-five bonds for one thousand dollars each, issued by the State of Minnesota to us, and now in the hands of Thomas B. Coddington & Co., of the city of New York, and authorize and empower him to have and receive the same.

In witness whereof we have caused these presents to be signed by our president, Edmund Rice, and attested by our secretary, James W. Taylor, and our corporate seal to be thereto affixed this 13th day of May, in the year one thousand eight hundred and fifty-nine.

[SEAL.] EDMUND RICE,
President.

Attest:
JAMES W. TAYLOR,
Secretary.

EXHIBIT B.

ST. PAUL, *May 13th*, 1859.

For value received, I hereby assign, transfer, and set over unto Edwin A. C. Hatch the forty-five Minnesota State R. R. bonds of the denomination of one thousand dollars each, now in the hands of T. B. Coddington & Co., of the city of New York, and all my right, title, and interest therein, being the bonds issued to the Minnesota & Pacific Railroad Company, and transferred by said company to me.

S. CHAMBERLAIN.

19 EXHIBIT C.

ST. PAUL, MINNESOTA, *Dec. 12th*, 1859.

Messrs. T. B. CODDINGTON & Co.,
New York City:

GENTLEMEN: Please deliver to Hon. John M. Barbour the forty-five Minnesota State railroad bonds described in the annexed assignment, and oblige

Yours, respectfully,

EDWIN A. C. HATCH.

Memorandum.

NEW YORK, *October 30th*, 1860.

Called on Mr. T. B. Coddington at his office, No. 76 Broad street, and presented the annexed papers to him, which he read, and requested the delivery of the forty-five bonds mentioned therein, which he refused to do, because the referee had decided in his favor in suit against the co. and directed the bonds to be sold.

JAMES K. AYMAR.

RENSSELAER R. NELSON, for plaintiff, being recalled, testifies as follows:

I was acting president of this company during the months of March, April, and a portion of the month of May, in 1859, and also at some other times when the president was absent, by virtue of the by-laws of the company. The company had possession of bonds of the de-
20 nomination mentioned in this assignment in February or March, 1859. They had in February $100,000 worth, which I received from the governor of the State for the company. I think I received them in February—one hundred bonds of $1,000 each, issued by the State in the aid of this railroad. I delivered $45,000 worth of these bonds to Wm. H. Newton with instructions for a specific purpose—he was a resident of Minnesota, and a director of the Minnesota and Pacific Railroad Company. The paper dated March 18, 1859, is my handwriting, signature and all, except the printed portion—the heading of the paper. I delivered, on the 18th of March, to Mr. Newton, the day of this date, and under this authority, this letter of instructions. The paper is marked "Exhibit D," and was read in evidence as follows:

EXHIBIT D.

OFFICE OF THE MINNESOTA & PACIFIC
RAILROAD COMPANY,
St. Paul, March 13th, 1859.

WILLIAM H. NEWTON, Esq.:

I authorize you to borrow upon $45,000 of Minnesota State R. R. bonds,

deposited with you, $16,000 in money, and pay the interest-coupons upon the first-mortgage bonds of the M. & P. R. R. Co., which are due upon April 1st, in New York City, upon the presentation at the bank at which they are made payable.

R. R. NELSON,
Acting President M. & P. R. R. Comp'y.

21 Witness resumes: I took a receipt of the paper now shown me, similar in character to this, from Newton. That is Mr. Newton's handwriting, and, to the best of my recollection, that is the paper. The paper I took was signed by Mr. Newton. The paper is marked "Ex. E," and plaintiff's counsel reads it in evidence, as follows:

EXHIBIT E.

OFFICE OF THE MINNESOTA AND PACIFIC
RAILROAD COMPANY,
St. Paul, March 18, 1859.

Received of R. R. Nelson $45,000 State of Minnesota railroad bonds, to be used as per his instructions in letter of this date, for payment of interest-coupons on first-mortgage bonds of the Minnesota and Pacific Railroad Company, due April 1st, 1859, in New York.

WM. H. NEWTON.

I think these bonds were received in February from the State by me, and it was between February and 18th of March, 1859, they delivered to Mr. Newton. I think it was in the forepart of May, 1859, between the 1st and the 13th. I first learnt that these bonds were in the hands of Mr. Coddington. I did take measures and assist in measures taken to obtain their return from Mr. Coddington. An order was given, under a resolution passed by the board of directors, to Mr. Newton or to Mr. Rice, either—both their names were mentioned in the order—a written order, to get these bonds.

22 THOMAS B. CODDINGTON, for the plaintiff, being sworn, testifies as follows:

I am the Thomas B. Coddington mentioned in the pleadings here. I did not receive 45 bonds from Wm. H. Newton. I received them from Mr. Rice. I did not receive 45 bonds from Mr. Newton. I know Mr. Newton. I did not receive them in consequence of some arrangement made with Mr. Newton. I had a conversation with Mr. Newton about that before I saw Mr. Rice. I saw Mr. Rice on the subject. I saw Mr. Rice before I received the bonds. Mr. Rice delivered them to me by letter by the hands of Mr. Newton. Mr. Newton left a package in the safe for safe-keeping. I did not open that package. Mr. Newton came with a letter from Mr. Rice, and opened the package. They were in the safe of Coddington & Co. Mr. Newton delivered the bonds to me by letter from Mr. Rice. He handed them to me. I paid no money. I never paid him any money for the bonds.

On cross-examination witness testified:

I received the bonds by virtue of a letter from Mr. Rice. This is the letter. (Letter produced.)

Redirect:

These funds were delivered to me on the 21st of April, 1859. Mr.

Nichols, my partner, took them abroad. I sent them abroad soon
23 after, within a week or about a week—within a short time—a short time after I received them; a week or two, at any rate. I have a portion of them now. I have got twenty-five of these identical bonds. Fifteen have been disposed of—yes, there were forty-five. I disposed of twenty. I have not got the other twenty. I did not deliver them back to the company. I never delivered to the company the proceeds of those bonds, nor to any one else for the company.

Recross:

These bonds were in the safe, I say, in a package, before the delivery made to me. I had no possession or control over them until they were delivered to me, as I state, on the 21st of April. They were in a package, tied up or sealed. I never examined the package to see whose name was on it. I remember the statement when they were left. He said they were bonds, and he wanted to leave them in my safe for safe-keeping. I put the package, after he gave them to me, in the safe. That is all I know of their contents. That is all I had to do with the bonds or package, except to let the package lie in the safe for safe-keeping, at his request, until the 21st of April. On the 21st of April the bonds were handed to me. When he handed them to me he said that they were collateral—security for the contract.

24 (To the court.) He said they were the bonds referred to in the paper. It is impossible to state the exact language, or anything more than the substance. The contract was brought to us by the young man who came down with Mr. Newton, after it was executed. Then we had it. I had the contract in my possession at the time I received this. Just at that time I received it, or short time before. It came by Mr. Douglas, my clerk. I stated that I sent these bonds abroad, to England, by my partner, Mr. Nicholas, to be negotiated or used in the purchase of railroad-iron. I never heard of Mr. Hatch, here, as being connected with these bonds until the presentation of the papers on the 30th of October, 1860. These bonds were bonds of a thousand dollars each. I don't remember were they payable in 1883 or not. I can tell by looking. This show' me is one of the bonds. I say I have twenty-five of them, and the other twenty I have not. They were all sold at auction at the Exchange, the whole forty-five, in New York at the end of November, or in December, 1860. I bought forty of them at the sale. In 1866 I got the twenty-five bonds I now have from England. We gave a letter of credit to draw as it states. This is it. I don't know whose writing that "Edmund Rice" is; I understood that is his signature. I have never seen him write. This had been delivered at the St. Nicholas Hotel the day the contract was executed. It is addressed to Mr. New-
25 ton. I gave it to Mr. Rice with the other paper—with the contract—previous to the time that Newton came down and opened the package of forty-five bonds, the same day. Previously, on the same day, that paper was given to me by the hands of a clerk, Mr. Douglas. I know I sent it with the contracts as a part of the contracts mentioned sent by my clerk. The clerk brought back the contract executed by Mr. Rice, which was sent up to the St. Nicholas Hotel, with the other papers, by Douglas, with the letter addressed to Newton, and also with a copy or duplicate of that contract executed by me. There were letters—no other papers than we have here. He brought back to me in return this copy of a contract executed as it is now by the company. Then subsequently, on the same day, Mr. Newton came to the office bringing a letter from Mr. Rice, and he took this package and opened it, and gave me the bonds.

Defendant's counsel offered in evidence the contract (Ex. 1,) and the letters (Ex. 2 & 3.) Plaintiff objected. The court ruled that the plaintiff having proved that defendants received the bonds by the hands of Newton, the papers were admissible to show how the defendants in fact received them. The papers were then read in evidence, and plaintiff duly excepted.

EXHIBIT No. 1.

Agreement made the 21st day of April, 1859, between the Min-
26 nesota and Pacific Railroad Company, a corporation created under the laws of the State of Minnesota, and T. B. Coddington & Co. of the city of New York.

The said railroad company agrees to purchase of said T. B. Coddington & Co., who agree to sell to said company, one thousand tons of good merchantable railroad-iron, at sixty dollars per ton of 2,240 pounds, cash on delivery, and for the purpose of aiding said company in the construction of its road, the said T. B. Coddington & Co. agree to loan and advance to said railroad company $16,000, for which they are to execute their promissory note or notes, payable at six months, with interest at seven per cent.

The said railroad company agrees to deposit with T. B. Coddington & Co. forthwith $85,000 of Minnesota State seven per cent. bonds, now belonging to said company, as a security for said loan, and for the performance of this contract by said company; and the said T. B. Coddington & Co. are hereby authorized to negotiate and make sales of said bonds, or to use the same for the purchase of iron, and are to account to said company for said bonds or the cash proceeds of any of them sold, upon the maturity of the note or notes given for said loan, or as soon thereafter as the same may have been sold.

The said iron is to be the Erie pattern, to weigh from 57 to 58
27 pounds to the linear yard, and to be deliverable to the said company in the city of New York on or before the first day of July next, free of duty, freight, and all other charges, on being paid for by said company. In case the said company shall not be prepared to receive and pay for the said iron when it shall be ready for delivery in New York, all subsequent charges for storage, &c., on said iron shall be at the expense of said company.

The said T. B. Coddington & Co. shall have the option to store the same or to forward it to Milwaukee or St. Paul, at the risk and charge of said company, and to retain the title to the same till the said company shall receive and pay for it at the place to which it shall be forwarded. If the said T. B. Coddington & Co. shall purchase iron with the said bonds, whatever excess above the cash price shall be paid for the iron so purchased shall be allowed in accounting for said bonds as a discount from the par value of the same.

In the event of T. B. Coddington & Co. having to pay any greater amount of duty upon said iron than the present tariff rate of 24 per cent. upon the price of £6.10*s.* per ton, the said additional duty is to be added to the contract price of $60 per ton named herein, and the said company agrees to assume and pay the same. It is hereby further understood
and agreed, that should the company be unable to receive and pay
28 for the said iron within four months after the time specified herein for the delivery, or say on or before the first day of November, 1859, T. B. Coddington & Co. may sell the same either at public or private sale for the account of the said company. And upon the non-pay-

ment at maturity of any of the notes given for the loan of $16,000, the said T. B. Coddington & Co. may sell at public sale in the city of New York or elsewhere the said $85,000 of Minnesota State bonds, or so much of them as will re-imburse them for said loan and for any deficiency between the amount realized for said iron in such resale and the contract price, together with all expenses incurred thereon for the accommodation of said company.

Said T. B. Coddington & Co. may buy at any public sale of said iron or bonds all or any portion of the same for their own account, provided public notice of said sale be first given in three daily papers of the city of New York for at least two weeks before said sale.

The said T. B. Coddington & Co. have the privilege of furnishing one thousand tons more of said iron at the same price, and deliverable upon the same terms, within the present year, and after the first day of August next, the weight per linear yard to be not less than 52 nor more than 58 pounds, and another thousand tons weighing not less than
29 50 nor more than 58 pounds per yard, deliverable in the spring of 1860; provided they shall give notice of such option by letter addressed to the president of said railroad company at St. Paul, and duly mailed at New York, on or before the 1st day of July next, for the second thousand tons, and on or before the first day of January, 1860, for the third thousand tons. On such notice being given, this shall be a binding contract on both parties for the sale and purchase of the additional quantity specified in the notice, and the said railroad company in that case agrees to deposit with said T. B. Coddington & Co., as soon as the first thousand tons shall be ready for delivery in New York, an additional amount of similar Minnesota State bonds by way of security for the second thousand tons of iron, and with the like power to sell and dispose of the same; and as soon as the second one thousand tons shall be ready for delivery, to deposit a like amount of bonds as security for the last one thousand tons, the amount so to be deposited to be satisfactory to said T. B. Coddington & Co., but not to exceed $75,000 of bonds for each 1,000 tons of iron. It is understood that William H. Newton shall, as early as practicable, proceed to Great Britain to aid on the part of said company in the negotiation of the said bonds, and shall have authority on the part of said railroad company to fix a price at which the said T. B. Coddington & Co. may take the said bonds
30 themselves as cash; provided satisfactory arrangements cannot be made there for the purchase of iron with said bonds, or for the sale thereof.

In witness whereof the parties hereto have executed these presents, the said Minnesota & Pacific Railroad Company by their president, duly authorized by resolution of the board of directors of said company.

THE MINNESOTA & PACIFIC RAILROAD CO.,
[L. S.] By EDMUND RICE, *President.*
T. B. CODDINGTON & CO.

EXHIBIT No. 2.

ST. NICHOLAS HOTEL.
New York, 21 *Ap'l*, '59.

Messrs. T. B. CODDINGTON & CO.:

DEAR SIRS: In conformity with an agreement made with you this day, I hand you by Mr. Wm. H. Newton $45,000 of Minnesota State bonds, and will send you without delay a further amount of $40,000 of

like description State bonds, as collateral and for negotiations as per same agreement.

I also hand you our three notes, bearing this date, at 6 months, with interest at seven per cent., one for $6,000 and two for $5,000 each, in all $16,000, against which you will please grant a letter of credit for $16,000 in favor of Wm. H. Newton, stipulating that on your
31 receiving the remaining $40,000 of bonds above referred to, you will accept drafts drawn by him at one day's sight on you.

I am, yours, respectfully,

EDMUND RICE,
Prest. Minnesota & Pacific R. R. Co.

EXHIBIT No. 3.

76 BROAD STREET,
New York, April 21st, 1859.

WM. H. NEWTON, Esqr.:

DEAR SIR: In conformity with an agreement as per letter addressed to us by Edmund Rice, president of the Minnesota and Pacific Railroad Company, bearing this date, we will accept and pay your drafts or bills of exchange, drawn at one day's sight, to the amount of $16,000, on our receiving $40,000 in seven per cent. Minnesota State bonds, which with $45,000 of said bonds now in our possession will make the deposit referred to in our contract with said railroad company of this date.

Respectfully, yours,

T. B. CODDINGTON & CO.

Attest:
EDMUND RICE.

This letter of credit, marked "No. 3," has never been returned to
32 me; the date of letter is April 21st, 1859. I received 3 notes dated April 21, 1859, at the same time I received the letter. (Notes produced.) They have remained with me ever since.

(The notes are marked "2 A," "2 B," & "2 C," and read in evidence, as follows:)

EXHIBIT No. 2 A.

$6,000.] NEW YORK, 21*st April*, 1859.

Six months after date the Minnesota & Pacific Railroad Company promises to pay to the order of Messrs. T. B. Coddington & Co. six thousand dollars, with interest from date at seven per cent. per annum, at the banking-house of Messrs. Duncan, Sherman & Co., in this city, for value received.

Due Oct. 21–24.

THE MINNESOTA & PACIFIC RAILROAD CO.,
By EDMUND RICE, *President.*

EXHIBIT No. 2 B.

$5,000.] NEW YORK, 21*st April*, 1859.

Six months after date the Minnesota & Pacific Railroad Company promises to pay to the order of Messrs. T. B. Coddington & Co. five thousand dollars, with interest from date at 7 per cent. per annum, at

the banking-house of Messrs. Duncan, Sherman & Co., in this city, for value received.

Due Oct. 21–24.

THE MINNESOTA & PACIFIC RAILROAD CO.,
By EDMUND RICE, *President, &c.*

EXHIBIT No. 2 C.

$5,000.] NEW YORK, 21*st April*, 1859.

33 Six months after date the Minnesota & Pacific Railroad Company promises to pay to the order of Messrs. T. D. Coddington & Co. five thousand dollars, with interest from date at seven per cent. per annum, at the banking-house of Messrs. Duncan, Sherman & Co., of this city, for value received.

Due Oct. 21–24.

THE MINNESOTA & PACIFIC RAILROAD CO.,
By EDMUND RICE, *President.*

Redirect:

I have never paid any money under that letter of credit; nothing has been drawn upon me under it. The additional $40,000 of bonds called for by the letter I have not received. (A letter is shown witness dated St. Paul, April 30, 1859, purporting to have been written by Mr. Rice, the president of the railroad company.) I received this. There is a memorandum of its receipt on May 6th. I have no doubt that was the time I received it.

The letter was then read in evidence by plff.'s counsel, as follows:

EXHIBIT F.

OFFICE OF THE MINNESOTA & PACIFIC R. R. Co.,
St. Paul, April 30th, 1859.

GENTLEMEN: I found upon my arrival here that the acting president of this company had disposed of the 40 Minnesota State bonds
34 which were to have been forwarded to you by the terms of the contract made between us in New York. You will perceive, therefore, that it is impossible for the company to comply with its undertaking. Some action of the board of directors will be had upon the subject, of which I shall take pleasure in advising you at the earliest moment.

Very respectfully, your obedient servant,

EDMUND RICE,
Prest. Minn. & Pacific R. R. Co.

T. B. CODDINGTON & Co.,
New York.

I have never delivered any iron to the company. I cannot say exactly whether I had any more than 638 tons on hand here on the 1st July, 1859. I know we had one invoice on the way at the time the contract was made. We had 2,000 tons that we had already purchased, some of which was on the way. I cannot say without referring to the books whether I had any more than 638 tons here on the 1st of July. I know that we had 2,000 tons ordered. I know that we had some on the way which was shipped in June; the first lot we had received. I don't recollect to swearing that I had no more than 638

tons on hand on the 1st of July, 1859; if I did swear to that it was correct. I don't recollect how many days before the 21st April, 1859, the date of this letter of credit, it was that I received that package of bonds from Mr. Newton—a few days before. I can't tell you
35 how many, further than that; probably within eight days; I don't know. The letter marked "No. 2," signed Edmund Rice, and directed to me, is in the handwriting of one of our clerks. Our attorney drafted the letter—Mr. Nash, or somebody in his place. All the papers were drawn by him, or by his directions. This was a very important matter. This letter was sent up to the St. Nicholas Hotel by one of my clerks. I understood that Mr. Rice was not very well. I don't know whether he had been confined to his room; he had not been to my office in reference to this matter. I had called there by appointment to see him at his room in the morning. I called upon him after the negotiation had been completed, and before the agreement was engrossed. I saw him there by appointment; I found him in his room. I think it was the day before the 21st, or the morning of that day; probably of day before. I am very positive that I called at the St. Nicholas Hotel with Mr. Nash in the morning, coming down. I went to Mr. Rice's room, and Mr. Rice came to the door and said he would come down in the morning. He did not come. That was the extent of the conversation. I went to the door with Mr. Newton. I spoke to him. I gave the usual salutation. The substance of it was that I had come to see him about the contract, but he was not in a condition to see me, and he said he would come down during the day. I think it was the day before
36 the date of these papers. He did not come down; Mr. Newton did. I don't think Mr. Nash went to the room with me; I think he remained below, and I came and joined him and we went down. I went up, probably, the 3d story, as near as I can remember, to find Mr. Rice; it was on the front, on the Broadway side, I think it was; that is my impression now. I didn't say this package was either sealed or tied up; I don't remember. I did not have it in my possession; I had it in my safe, but I did not handle it. I have those 25 bonds which I got in 1866. I got them from Europe in 1866. I bought them before at an auction sale. After I had bought them at auction sale I shipped them abroad to be disposed of.

On cross-examination, witness testified:

Mr. Douglas, who took these papers, was my clerk, and is now dead. He was examined as a witness in the State court suit. I have not delivered any now to this company. I received these two papers from the company at or about the time of their date.

The papers just produced were then read in evidence by defendant's counsel, as follows:

EXHIBIT 4.

OFFICE OF THE MINNESOTA &
PACIFIC RAILROAD COMPANY,
St. Paul, May 17th, 1859.

Messrs. T. B. CODDINGTON & Co.:

37 GENTLEMEN: Enclosed please find an attested copy of a resolution passed on the 13th inst. by the board of directors of this company in respect to the contract I made with you on the 22d ult. Mr. Newton will leave for New York early next week, and will be able to explain the particulars of our inability to comply with the agreement.

It is not improbable that a satisfactory arrangement may be made with Mr. Chamberlain by furnishing him with iron for our road. I shall visit New York in a few weeks, and will call to see you.

Very respectfully, your obt. servt.,

EDMUND RICE.

EXHIBIT No. 4 A.

SECRETARY'S OFFICE,
MINNESOTA & PACIFIC R. R. CO.,
Saint Paul, May 17, 1859.

At a meeting of the board of directors of the Minnesota & Pacific R. R. Co., held in St. Paul, May 13th, 1859, the following resolution was unanimously adopted:

Whereas circumstances have arisen in the affairs of this company whereby it has become impossible to comply with the terms of the contract made by the president thereof, on behalf of the company, with T. B. Coddington & Co., of the city of New York, under date of April 22d, 1859: Therefore,

Resolved, That Wm. H. Newton, esq., be, and he is hereby,
38 authorized to proceed to New York and procure a surrender of said contract and a return of the forty-five Minnesota State bonds transferred to Messrs. T. B. Coddington & Co., upon such equitable terms as may be agreed upon.

[CORPORATE SEAL.] T. M. METCALF,
Secretary.

They were received May 25th, 1859. After that Newton came down; he came to see me in regard to this resolution and my contract. He at that time handed me the communication now shown me; that was the time he came, June 7th. At this time the bonds had been sent to England. We were capable of fulfilling according to these terms. We had at the time contracted for 2,000 tons to purchase and come forward.

Redirect:

If I have testified that on the first of July I had in New York but 638 tons of iron, I have no doubt it was true. I have recently referred to the invoice. I didn't buy any iron in view of the contract, but before the contract. The 2,000 tons I spoke of was ordered in view of my other business, and this contract was in view of disposing of that.

Recross:

39 At the time I made this contract, on the 21st of April, I had given orders for iron to the extent of 1,000 tons, which, in the course of trade, I might expect to arrive before the delivery required of this contract on the 1st of July, 1859, and of the quality called for by the contract; the contract was made to conform to what we had purchased abroad and expected. I could have bought this iron of the description, quality, and quantity by the 1st of July in the market.

(Objected to by plaintiff's counsel. Objection overruled by the court, to which decision plaintiff's counsel then and there duly excepted.)

I suppose I could have bought 1,000 tons, but we had about 700 tons. On the 1st of July we had 700 tons at any rate, and we may have had more. I infer we had that, part from what the counsel says. At the time of the contract we ordered the iron forward as soon as we could execute it. I presume that order was in writing. Mr. Nichols went

out there. As soon as we had this correspondence stating that they could not fulfill the contract, knowing that he did not require it, we did not have it come forward rapidly, but it did all come forward in the end.

Recross:

We had a house abroad. We gave orders to our house abroad. We make it a practice to keep copies of our letters. I keep letter-
40 press copies. I think we have kept them in this case. I have no doubt about having kept them. I will furnish anything we have.

RENSSELAER R. NELSON, for plaintiff, being recalled, testified as follows:

These bonds were delivered to me while I was acting president of the company by the governor of the State, and in that way was received from the company. I was authorized by the company to devote them to this purpose. I was authorized by the board to raise certain moneys on the bonds in my hands for certain purposes; one of them was $16,000.

By Mr. EVARTS. Were there any resolutions authorizing this thing being done?

A. Yes, sir; I think one resolution was passed in January, and the other in February. I think there were two resolutions. (A book produced to the witness.) Here is the first resolution in the book of the proceedings of the executive committee of the board of directors of the Minnesota & Pacific Railroad Company. It is dated January 23, 1859. (Witness reads the resolution, which reads as follows:)

ST. PAUL, *January 23d*, 1859.

At a meeting of the executive committee, present R. R. Nelson, chairman; E. A. C. Hatch, Benj. Thompson, & Wm. H. Newton.

On motion,

Resolved, That R. R. Nelson, acting president of the Minne-
41 sota & Pacific Railroad Company, be authorized to make application and receive from the governor $100,000 of the State bonds, which said company are now entitled to.

Resolved, That the acting president be instructed to appropriate the $100,000 of the State bonds which the Minnesota & Pacific Railroad Company are now entitled to from the State to pay the actual current expenses which have accrued up to date, and which may hereafter accrue, including salaries of officers, interest of the 1st-mortgage bonds of the company already disposed of, and other incidental expenses.

R. R. NELSON,
Chairman.

WM. H. NEWTON,
Secretary.

Here is the other resolution, dated February 3d, 1859. (Witness reads the resolution, which reads as follows:)

ST. PAUL, *February 3d*, 1859.

At a meeting of the executive committee, present R. R. Nelson, chairman, Benj. Thompson, Wm. H. Newton, and E. A. C. Hatch.

On motion,

Resolved, That R. R. Nelson, as acting president of the Minnesota &

Pacific Railroad Company, be, and is hereby, authorized to sell all or any portion of the State bonds in his hands at such rates as he may deem to the best interests of the company, and apply the proceeds as heretofore directed by resolution of the executive committee, and any or all
42 of said proceeds be placed to the credit of R. R. Nelson, the vice president of this company, for the benefit of said company, as he may direct.

Ayes: Thompson, Newton, and Hatch.

R. R. NELSON,
Chairman.

WM. H. NEWTON, *Secy.*

These two resolutions gave me the authority upon which I acted in delivering the bonds to Mr. Newton. The interest was about becoming due upon certain bonds which were held by the State.

The first-mortgage railroad-bonds of the company *was* held by the State, and *was* delivered to the State at the time the State had given their bonds to the company to aid it. It was a land-grant railroad—a grant given to the State for railroads—and it was disposed of to this company by an act of the legislature. It was the business of my company to provide the means to pay the interest of these bonds, that the State might have the means of paying its own. They gave us the quantity that we turned over to the State. These forty-five $1,000-bonds were a part of the 100 $1,000-bonds which I received by virtue of this first resolution. There was no authority to any one besides myself, to my knowledge, to negotiate the sale of these 100 $1,000-bonds, or any part of them. There are some of the meetings of the board
43 and of the finance committee I may have been absent from. I generally attended. Mr. Newton returned to St. Paul after his mission with these bonds.

On cross-examination witness testified:

This is a copy of a letter I wrote. I don't know where the original is, and I don't know who has it. I wrote this at the time of its date; it was either written by the secretary, under my direction, and signed by me, or written by myself.

The letter was then read in evidence by defendant's counsel as follows:

EXHIBIT 6.

OFFICE OF THE MINNESOTA & PACIFIC RAILROAD CO.,
St. Paul, May 14th, 1859.

Messrs. T. B. CODDINGTON & CO.:

GENTS.: You will please deliver to Messrs. Rice, or Wm. H. Newton, 45 Minnesota State 7 per cent. bonds, of the denomination of $1,000 each, now in your hands, issued by the State to the Minnesota and Pacific Railroad Company, said bonds belonging to the railroad company.

Very respectfully, yours,

R. R. NELSON,
Acting President M. & Pacific R. R. Co.

I think it was either delivered to Mr. Newton or to Mr. Rice.
44 Q. (By the court.) You say Mr. Newton carried that letter to New York, when he came down, in pursuance of the resolution? A. I think he did. I have been a resident of Minnesota for more than

21 years. I held the office of vice-president of the railroad company, as I have stated. The periods of my being acting president were occasioned by the absence of the president at any meeting of the board or executive committee. If he was away in New York, and I was there, I would act as president. My impression is, it was either in the by-laws or in the charter of the company. It may have been in the charter of the company. I believe there is a book of minutes of the directors. I don't know. I read from a book of the proceedings of the executive committee during a portion of the time of the existence of the company. I was a member of that committee. I was a member of that committee in the absence of the president ex officio. It was a part of my duty to act as president. Mr. Hatch was a member a portion of the time, I think. During this portion of the proceedings that I have read Mr. Newton was a member of the executive committee up to the 13th of May, or about that time. Then there a change in the board of the directions. He resigned, and I think Mr. Hatch resigned. Mr. Newton resigned the position on the 13th of May, or about that time. Mr. Rice was ex officio member of the executive committee as president.

45 When he was there as a member, I was not. I am inclined to think that it was in the charter of the company that there should be an executive committee, to be composed of a certain number of directors, and that the president should be ex-officio chairman. The charter may be here. I have the impression that committee, as constituted, received its power from the charter or by-laws. (Book produced.) That is a book containing the proceedings of the board of directors up to a certain period, during this period spoken of. (Producing two books to witness.) These are authorized publications. One is what you would call in this State the session laws of 1866, with concurrent resolutions, etc.; the other is the revised statutes of 1866, printed by public authority. This is the revised statutes, or which is a revision of the statute made 1866. (Producing another book to witness.) This purports to be a journal of the house of representatives of Minnesota. I have never been a member of that distinguished body, and do not know anything about it. As a mere expression of opinion, I should say that this volume is an authorized publication of the State legislative proceedings. The legislature sits in St. Paul. I think these are authorized copies of the general laws of Minnesota, 1858 & 1861. On the return of of the president to St. Paul, and the presentation of the contract which

46 was entered into between Mr. Coddington and himself to the board of directors, a discussion arose upon the contract. I knew of no authority to dispose of these $100,000 worth of bonds, except the resolutions that conferred authority upon me. I looked over the book of minutes of the executive committee or of the board of directors, to see whether there was any authority. Here is the first date. I think both of these should be 1859, instead of one being in 1858, as I have stated. At that time I think Mr. Rice was away. I think he was in New York, or Philadelphia, perhaps. On the 22d of February, 1859, was the next resolution; he was away then. I delivered to Mr. Newton the letter and bond therein mentioned at the time. I gave him 45 $1,000 bonds, and no more. I don't know what the number of those bonds were. My impression is that there is some record of them in the office, but I don't know. The only information I have is hearsay, from Mr. Newton, that any of the bonds in the possession of Mr. Coddington are of those 45 bonds. I have never seen the bonds since I delivered them to Mr. Newton. These bonds were endorsed by the president of the company. That was the form of the State bond, and I think there was an endorsement—some-

thing of that sort. (Here is the endorsement on the bond already produced;) that is Mr. Rice's signature. When I gave them to
47 Mr. Newton, all of them were endorsed in that way. I had sent them previously to New York to the president, and I received them back from him endorsed. These 45 bonds delivered by me to Mr. Newton had been delivered to somebody else previously—I think by Mr. Hatch, to give them to Mr. Rice for his endorsement, and to be returned to me. I think the verbal instructions I gave to Mr. Hatch, and to raise some money on them if he could, after having received the signatures of the president to them, or, if he could not, to return them to me. My impression that was in February, between the 23d and last of February. My impression is that I received them from the State somewhere about the 23d of February. I gave the whole $100,000 of the bonds to Hatch to raise money on them, and, if he could not raise any, to return them to me. After that, 85 came back to me.

Redirect:

I was charged with the duty of disposing of these bonds. I think the letter appearing to have been dated May 14th was written the day it purports to have been written.

EDMUND RICE, for the plaintiff, being recalled, testified as follows:

Q. Where were you in the months of February, March, and a part of April, 1859?

48 A. I was in Philadelphia and New York. I went to Washington in February, and remained there 3 or 4 days; then went to Philadelphia. I was in the three places I have mentioned. I came to New York early in April the last time before I left. I was taken ill the day after I was here from Philadelphia, and I was confined in my room from that time until I left for St. Paul. I was between 2 & 3 weeks. I think I left on the 22d of April. I think I was confined about 2 weeks, perhaps a day or two over. I did not leave the room from the time I was taken ill until the day I started to go to St. Paul. I found Mr. Newton in Philadelphia; I was there when he came. That was the latter part of March I should think, from recollection. I am inclined to think we came on here together, but I am not positive; we came about the same time, and I think we came over together. I was aware he had those 45 bonds; I was first made aware of it when we reached Philadelphia. I knew the purpose for which he had them. If I did not see his letter of instructions, he told me the substance of it. I think I saw it. After I arrived here in New York I was immediately taken ill, I think the next day—perhaps that evening; I don't recollect. I was not well in Philadelphia. My illness was rheumatic fever. I first heard
49 him speak of the negotiations between himself and Mr. Coddington perhaps 3 or 4 days after we reached here; it may possibly have been six; it was soon after. I had no interview whatever with Mr. Coddington before leaving New York. I heard his statement about having seen me at my room; I am very confident I did not see him; I had no conversation whatever with him. I saw Mr. Coddington in September, months previous to that, but did not see him while I was in New York City; he was not at my room when I was there; I was there all the time. Mr. Newton conducted the negotiation which led to the signing of these papers, (referring to Nos. 1 & 2.) I had nothing whatever to do with it, except that he repeated to me day by day how he was progressing. All I have to say is, that I had no communication with anybody else but Mr. Newton on the subject of sign-

ing these papers. I remember the occasion of signing these papers. Mr. Newton and the young gentleman said to have been a clerk of Coddington & Co. were present. Mr. Coddington was not in my room, and I was not aware of his being at the hotel. I believe I delivered the papers to Newton. He took the papers. I handed to Mr. Newton the contract and letters. The contract marked No. 1 I think was in the condition it is now, but I cannot state positively that his signature
50 was at the end of it, but I think it was. I signed it, and the signature of Mr. Coddington was there; it was there when I signed it. I signed it, and the seal of the corporation and Mr. Coddington's signature were on it. I am not certain about Mr. Newton's. At the time I handed him that letter it was in the condition it is now. The letter of credit was left with me at the time. There were several papers left with me at the same time. I can't state positively that I retained the letter of credit from Mr. Coddington, but I read it. I think Mr. Newton took charge of all the papers. I cannot state that I took the letter of credit, but I think I saw it at the time. It was a letter to Mr. Newton. I think it was there at the time. I think that at the time I handed Mr. Newton the contract and letters *that* a duplicate of the contract was there. It was either executed by Mr. Coddington, or Mr. Newton brought them up afterwards, I cannot say positively.

Mr. STOUGHTON. You cannot say whether you had it there?

A. I can't say positively. I know Mr. Newton took charge of the papers. I was too weak to go into the details very particularly.

Mr. EVARTS. Repeat that.

A. I was too weak to exercise much physical labor at that time. It was with great difficulty I was able to get away the next day
51 and get in a carriage. I came out of bed when they came, and went to the table and executed the papers that were required of me to sign. I then returned to my bed.

Mr. STOUGHTON, resuming:

Q. Go on and state what was said by you at the time you signed and delivered these papers.

(This was objected to by defendant's counsel, but the objection was overruled.)

A. I said to Mr. Newton he might leave these papers with the bonds, but not to be of any effect unless the agreement was ratified.

By the COURT. "Leave these papers!" Was that the expression?

A. Or place them there.

Q. With Mr. Coddington?

A. Yes, sir; but not to take effect unless ratified by the board of directors, nor if Judge Nelson had disposed of the 40 bonds then supposed to be in his hands the company could not ratify it. I also called his (Mr. Newton's) attention to the language in this concluding part of the contract, where it speaks of a resolution. I said to him that must refer to a resolution yet to be passed by the board of directors.

The COURT. I do not wish the counsel to understand that the court, in admitting the question as to conditions imposed, admits anything except that. If there is anything in this answer that is not strictly confined to that, it comes under the objection.

52 Mr. EVARTS. I will then make a secondary objection to the admission of anything said that goes beyond the statement of the condition imposed by Mr. Rice in the delivering of the papers.

Mr. STOUGHTON. You have stated that you told Mr. Newton that if

the 40 bonds had been sold by Mr. Judge Nelson, or had been disposed of, the company could not ratify the agreement. Had the company any other of the bonds but the 40?

A. They had not. They were all they possessed. They received those bonds upon the certificate of the State engineer. The last $100,000 of these bonds was received on the certificate of the work being done up to that time. They were the last bonds which I had received up to the time of this interview. The board of directors had never authorized me in any way to execute such a contract as this. I got home to St. Paul the 28th of April, I think. I saw Judge Nelson immediately. I ascertained from him, before writing the letter of the 30th April, that he had disposed of these 40 bonds. I wrote the letter which was read yesterday, and mailed it to Mr. Coddington, notifying him that the company could not carry out the agreement. I had after this, either in October or the latter part of September, an interview with Mr.
53 Coddington in New York. I had a conversation with him in regard to these bonds. I said to him, in reference to the bonds, that, Mr. Newton having surrendered his agency, I had come down to get the bonds and the surrender of the contract. I told him that the company insisted that the bonds were left with him conditionally and the contract only conditional, and if the company were unable to comply with it on their part it went for nothing, as we understood, and as we supposed the firm of Coddington & Co. understood it. I said to him that if he had been to any expense or damage particularly, I desired to know it, as we wanted to do what was right about it, and that I inferred there was some misunderstanding.

By the COURT. That who wanted to do what was right?

A. We. I said we all did—all who had anything to do with it. We were disappointed ourselves. There was some misunderstanding. I stated that I would like to bring Mr. Newton there, if there was a misunderstanding, and that all three of us meet together, face to face, talk the matter over, and see if we understood it alike. Mr. Newton was in Orange, New Jersey. Mr. Coddington said he would like to refer the matter to some merchant in the city of New York to settle the whole matter—a merchant or merchants. I told him I did not know
54 New York but very little, and I did not think there was anything to settle, or, rather, anything to refer; but we could, as honest men, settle the matter ourselves when we came to an understanding, if we understood it alike, and that I would go to Orange and bring Mr. Newton there as soon as I could, the next day, and talk the matter all over.

The COURT. Q. Did he say anything in reply to your statement that if he had suffered any damage you desired to know it?

A. Not in reply to that suggestion.

Q. You said you would go and bring Mr. Newton the next day?

A. Yes, sir. He asked me, as I was about leaving, if I would certainly return, and I told him I certainly would. We shook hands. I said I would return with Mr. Newton. That ended the interview. It was in his store or office. I went from there to the St. Nicholas Hotel, and found the sheriff's officer at my door with a summons from Mr. Coddington. I went after that to Orange and saw Mr. Newton, and talked the matter over with him, and afterwards had some conversation with Mr. Coddington. I took him to Mr. Coddington. I was there once with him. Whether we went together or not I am not positive. There were fifty miles of the road graded and culverted up to that time
55 in April. I have the knowledge of one sale of these bonds

in N. Y., and I have a knowledge of quotations in *in* the papers of another. I was present at one sale. I think I was present at one auction sale, but I am not positive. I saw the quotations, however. It was in the winter of 1859. I think it was in January. It might have been in February. The character of the transactions and dealings of these bonds were not on the stock exchange. I think they mainly hypothecated here for money. I was not aware of many sales. I refer to (when I state they mainly used for hypothecating to raise money) to the dealings here. I think each railroad company came here and raised money from different bankers by way of advances on the bonds. I think that money was obtained generally by hypothecation here. I only know of one quotation of sales—one reported—and I know of one or two private sales here. That private sale is one that was within my personal knowledge. I am inclined to think I was present at the reported sale, but I cannot state positively that I was there at the moment.

By the COURT. Prior to this $100,000 of bonds which Judge Nelson spoke of, what amount of bonds had been issued?

A. About $400,000.

Q. And this $100,000 made half a million?

A. Yes, sir.

By Mr. STOUGHTON. They issued $100,000 for every 10 miles
56 that was graded, bridged, & culverted?

A. Yes, sir; to pay for the road-ties. We turned these $400,000 over to Mr. Chamberlain and took his receipt. They had passed out of the hands of the company among the community. Plaintiff gave evidence by this witness of a private sale to one Lynde, and other testimony to show that the bonds in question were worth sixty cents on the dollar. The 3 bonds I sold to Mr. Lynde were not a part of the 85 bonds, but were a part of the 100 bonds—a part of the other fifteen. I made this sale for my own account, and not for company. These bonds were transferred to me by Major Hatch, the plaintiff of this suit, I understood, by the authority of this company. I got them from Mr. Hatch. I did not buy them of Mr. Hatch; I bought them of the company. They were charged to me, and I accounted to the company for them. I took them from the company. He was a director, and not an officer, further than perhaps he had some special directions. I think I acquired them in New York. I know it was in New York; I have no doubt of it at all. I am not positive that I received the bonds from Hatch in New York. I may have received them in Washington. I
was in Washington a few days, and he was there. I do not think
57 we stopped in Philadelphia. It was in February, probably, or possibly in January, that Major Hatch came down for the purpose of having me indorse the $100,000 bonds and negotiate them for money. He was authorized, as I understood him, to dispose of fifteen and allow me to have such portion as I wanted. He came down with $100,000 of bonds to be indorsed, and we have had evidence of what was to be done with them. I did not pay to the railroad company the cash for these bonds—not a dollar directly. I charged. I did not make disposition of the $15,000 of bonds; Mr. Hatch did. I do not think that I was present as president of the company at the actual sale of these $15,000 of bonds. In fact, I don't know who the purchasers were. If I knew at that time I have forgotten. I think all the $15,000 bonds were all sold for cash; so I understood from him. I think a portion of them were sold for my account; I don't know but all of them. It might have been the whole. I think I received the proceeds, but perhaps not all of them. I did not pay any cash directly to the company for

any part of the $15,000. I think this sale of the bonds to the amount $10,000 of the other railroads of Minnesota was before the private sale of $3,000. It might have been a month or six weeks before, or possibly two months. I should not think it was three months. The sale
58 at auction was prior to this transaction. It might possibly have been as much as two or three months before; perhaps not. I do not think it was so early as the fall of 1858. I think it was early in the winter. It may, possibly, have been in December. My cash sale may have been early in March. I do not think it was in April. I do not think I made an effort in Philadelphia to negotiate there for the sale or the raising of money on the fifteen bonds or on any portion of them. I think I tried to assist Mr. Newton in the sale of these 85 bonds in Philadelphia that winter and spring. I might have got a loan there. I don't recollect it, though it is possible I did. I did not make any sale. Mr. Newton came down in March and remained only a few days in Philadelphia. While we were there I gave him some references, and I think I saw one or two gentlemen. I was very much interested in the matter as president of the company. I was negotiating other securities, and was putting him in connection with railroad men. We tried and did not sell or negotiate these securities. This letter produced is in my handwriting. I suppose it was written at that time. I have read it through. I suppose it refers to the 85 bonds. I suppose that they were a part of the 85 bonds, though I cannot state
59 positively. Hatch had gone back to Minnesota before this with the whole 85 bonds. Newton joined me in Philadelphia, and he brought down the 45 bonds, and the bonds mentioned here, I think, were a part of these. I don't think they could have related to any other. I was trying to aid the sale of these bonds at the time this letter was written. In looking at this letter, I don't recollect whether that was the best offer I could get for these bonds. I do not recollect that either Newton or myself had any opportunity to make a better negotiation than that. I did not conclude this one. I do not recollect whether the best offer I had for the negotiations of the whole or any part of these 45 bonds up to the time of this transaction with Coddington was an offer by Mr. Fling of $10,000 cash and $6,000 in railroad bonds, worth 60 per cent., making $16,000 for six months, at 6 per cent., which would net about $13,400 at 4 per cent. by month. I don't recollect that I had any offer at any price. I don't recollect that offer of Mr. Fling, except from that letter. I know that he came to this city for the purpose of raising money, but did not succeed; the details I do not recollect. I do not recollect of any better offer than this, nor that we had any, except a gentleman coming here. The railroad company I was representing was in pressing need of money. I
60 was not dependent for the resources of the company to be applied to the expenses of your agency here, upon what I could raise upon these bonds—not wholly. I did not have any other supplies from the company. So far as I disposed of their funds or applied them to my own use I was dependent, so far as the company was concerned, upon these bonds to get money. These fifteen bonds were the only means the company provided for my use to meet these expenses. I had nothing to do with the 45 bonds, so far as I was personally concerned. I state distinctly that I had nothing to do with the 45 bonds, except to aid Mr. Newton in raising $16,000. I had no authority over them whatever, and never had them in my possession except for endorsement. I had no papers or documents whatever from the company to aid in the negotiation of these 45 bonds in the transaction of the contract between

this railroad company and Mr. Coddington. Mr. Newton had a letter from Judge Nelson; nothing else that I know of. I gave him that resolution you produce (Exhibit 10) during the negotiations with Coddington & Co. I gave him this other paper produced, (Exhibit 11,) also, and requested him to give it to Mr. Coddington, during the negotiations and before signing.

61 Exhibit 11 was read in evidence by plaintiff's counsel as follows:

EXHIBIT 11.

Section 10. The credit of this State shall never be given or loaned in aid of any individual, association, or corporation, except that for the purpose of expediting the construction of the lines of railroads in aid of which the Congress of the United States has granted lands to the Territory of Minnesota, the governor shall cause to be issued and delivered to each of the companies in which said grants are vested by the legislative assembly of Minnesota, the special bonds of the State, bearing an interest of seven per cent. per annum, payable semi-annually in the city of New York, as a loan of public credit, to an amount not exceeding 1,250,000 dollars, or an aggregate amount to all of said companies not exceeding five millions of dollars, in manner following, to wit: Whenever either of the companies shall produce to the governor satisfactory evidence, verified by the affidavits of the chief engineer, treasurer, and two directors of said company, that any ten miles of the road of said company has been actually constructed and completed, ready for placing the superstructure thereon, the governor shall cause to be issued and delivered to such company bonds to the amount of one hundred thousand dollars, and whenever thereafter, and as often as either of said

62 companies shall produce to the governor like evidence of a further construction of ten miles of its road as aforesaid, then the governor shall cause to be issued to such company further like bonds to the amount of one hundred thousand dollars for each and every ten miles of road thus constructed; and whenever such company shall furnish like evidence that any ten miles of its road is actually completed, and cars running thereon, the governor shall cause to be issued to such company like bonds to the amount of one hundred thousand dollars; and whenever thereafter, and as often as either of said companies shall produce to the governor like evidence that any further ten miles of said road is in operation as aforesaid, the governor shall cause to be issued to such company further like bonds to the amount of one hundred thousand dollars, until the full amount of bonds hereby authorized shall be issued: Provided, That two-fifths, and no more, of all bonds issued to the Southern Minnesota Railroad Company shall be expended in the construction and equipment of the line of road from La Crescent to the point of junction with the transit road, as provided by law; and further provided, that the Minneapolis Cedar Valley Railroad Company shall commence the construction of their road at

63 Faribault and Minneapolis, and shall grade an equal number of miles from each of said places. The said bonds thus issued shall be denominated "Minnesota State Railroad bonds," and the faith and credit of this State are hereby pledged for the payment of the interest and the redemption of the principal thereof. They shall be signed by the governor, countersigned and registered by the treasurer, sealed with the seal of the State, of denominations not exceeding one thousand dollars, payable to the order of the company to whom issued, transferable

by the endorsement of the president of the said company and redeemable at any time after ten, and before the expiration of twenty-five years from the date thereof. Within thirty days after, the governor shall proclaim that the people have voted for a loan of State credit to railroads, any of said companies proposing to avail themselves of the loan herein provided for, and to accept the conditions of the same, shall notify the governor thereof, and shall, within sixty days, commence the construction of their roads, and shall, within two years thereafter, construct, ready for the superstructure, at least fifty (50) miles of their road. Each company shall make provision for the punctual payment
64 and redemption of all bonds issued and delivered as aforesaid to said company, and for the punctual payment of the interest which shall accrue thereon in such manner as to exonerate the treasury of the State from any advances of money for that purpose; and as security therefor the governor shall demand and receive from each of said companies before any of said bonds are issued, an instrument pledging the net profits of its road for the payment of said interest, and a conveyance to the State of the first two hundred and forty sections of land free from prior incumbrances, which such company is or may be authorized to sell in trust for the better security of the treasury of the State from loss on said bonds, which said of trust shall authorize the governor and secretary of state to make conveyances of title to all or any of such lands to purchasers, agreeing with the respective railroad companies therefor. Provided, that before releasing the interest of the State to such lands, such sale shall be approved by the governor, but the proceeds of all such sales shall be applied to the payment of interest accruing upon the bonds in case of default of payment of the same, and as a sinking fund to meet any future default in the payment of interest and the principal thereof when due; and as a further security an
65 amount of first-mortgage bonds on the roads, lands and franchises of the respective companies corresponding to the State bonds issued, shall be transferred to the treasurer of the State at the time of the issue of State bonds, and in case either of said companies shall make default in payment of either the interest or principal of the bonds, issued to the said companies by the governor, no more State bonds shall thereafter be issued to said company, and the governor shall proceed in such manner as may be prescribed by law to sell the bonds of the defaulting company or companies, or the lands held in trust as above, or may require a foreclosure of the mortgage executed to secure the same. Provided, that if any company so in default before the day of sale shall pay all interest and principal then due, and all expenses incurred by the State, no sale shall take place, and the right of said company shall not be impaired to a further loan of State credit. Provided, if any of said companies shall at any time offer to pay the principal, together with the interest that may then be due upon any of the Minnesota State railroad bonds which may have been issued under the provisions of this section, then the treasurer of State shall receive the same, and the liabilities of said company or companies in respect to said bonds
66 shall cease, upon such payment into the State treasury of principal together with the interest as aforesaid. Provided further, that in consideration of the loan of State credit herein provided, that the company or companies which may accept the bonds of the State in the manner herein specified, shall, as a condition thereof, each complete not less than fifty miles of its road on or before the expiration of the year 1861, and not less than one hundred miles before the year 1864, and complete four-fifths of the entire length of its road before the year 1866,

and in any failure on the part of any such company to complete the number of miles of its road or roads in the manner and within the several times herein prescribed shall forfeit to the State all the rights, title, and interest of any kind whatsoever, in and to any lands, together with the franchises connected with the same, not pertaining or applicable to the portion of the road by them constructed, and a fee-simple to which has not accrued to either of said companies by reason of such construction which was granted to the company or companies thus failing to comply with the provisions hereof, by act of the legislature of the territory of Minnesota vesting said land in said companies respectively.

Witness resumes: I do not know that he did so; besides the
67 contract, I have no recollection of any other documents that were had or directed by me to be delivered to Mr. Coddington. I may have sent him the trust-deed; perhaps I did. I do not recollect. I had a duplicate or triplicate of it with me. I handed Mr. Newton those papers to be given to Mr. Coddington at the stage; that Mr. Newton thought or expressed his belief that the arrangement could be made to furnish $16,000, and finally an arrangement was made. This might have been a week or possibly a fortnight before the actual exchange of the contracts. I am not certain whether Newton and I came on to Philadelphia together or not. I remained here until the contract was closed and he came in to see me; he was not stopping at the hotel; he was about here all the time. I think we both left on the 22d for St. Paul. I stopped at Milwaukee on the journey, nowhere else; certainly we staid there one night or more. I do not recollect if it was necessary. I am not certain but we stopped on the road on account of my health; with that exception I was able to travel; during my illness I had a physician. My health was not materially different on the 21st when these contracts were exchanged to what it was on the 22d; I was convalescing. During the period of these negotiations these 45 bonds were
68 not in my possession. I never had possession of them, except when the whole $100,000 of them were brought to me for endorsement. They were in my room either in New York or Philadelphia, the latter I think. Mr. Newton had them open to cut off the coupons; the ones that had just matured. I understood them to be in Mr. Coddington s safe all the time they were not in my possession, but I will not swear that Mr. Newton did not have them in my room; they were not left there. I was not informed that they were taken from my room, but that they were put in Mr. Coddington's safe for safe-keeping. I don't know that I disapproved of that disposition of them for safe-keeping. I do not think that I said anything about it, but I knew of it. I should say that the drafts of these contracts or letters were submitted to me three or four days before the final execution of the contract. It may possibly have been a day or two longer, perhaps not more than two. I think about four days before that Mr. Newton brought me the draft of the contract. I did not see any other papers brought that morning, but a memorandum of the substance of the contract to be made. He read the draft of the contract to me and I approved of it. The contract that was sent to be executed by me substantially conformed to the
69 draft I had approved. I have no recollection that there was an appointment made by me prior to the meeting on the morning of the 21st of April for the purpose of executing the contract. Mr. Newton might have told me that he was coming up; he was in and out every day. I am pretty sure that the conversation I had with him concerning the execution and delivery of these contracts took place when he took the papers. There was a conversation between Mr. Newton and myself

prior to that. I do not recollect as to whether there were others in the room or not. Nobody was there but Mr. Newton. I had been examined twice before in this case, once on the trial before Judge Nelson and once on the trial before Judge Shipman; the latter trial was the earliest in the order of time. I may have testified at that trial that this conversation between Mr. Newton and myself concerning the delivery of this contract, that these statements and conditions connected therewith might have taken place the morning before the exchange of the contracts; if I did, it was truly according to my recollection then.

70 Q. Was not this question asked you: "State, if you please, what was said to you in your room at the time of the execution of this paper?" And did you not make this answer: "I cannot state precisely what I said that morning; I stated to him, however," then you were evidently interrupted, and the examination proceeds: "You were there at this time?"

Answer. "I would not undertake to say the precise time, whether it was that day or the evening before." I have no recollection of making that precise answer, but presume I did. If I am reported in answer to the question, "State was said," reply, "I can state what instructions I gave, but whether it was on that morning I would not undertake to say," I probably said so, I presume so.

Q. Then was not this question put to you by the court: "If on that morning, when was it?" And did you not answer: "It was during the pendency of the negotiations, I should think. He was perhaps two or three weeks, or perhaps ten days in bringing the contract to a conclusion. I think the instructions were given the day before, or at all events about the time they were taken, but whether they were given on

71 that morning I cannot say, but I had instructed him in regard to the subject-matter of the contract." Was that your answer?

A. I have no particular recollection as to the form of my answer. He called at my room on the morning of April 21st. Mr. Douglas, if that was his name, Mr. Coddington's clerk, came about ten o'clock, I think. Mr. Newton came with him. They brought these two papers. I do not recollect all the papers they brought. They brought duplicate contracts. I am not positive, but I think they brought the letters of credit; the papers were read to me. I think that all the papers were signed there on that occasion. I received all there to the best of my recollection that I received. To the best of my recollection I was only partially dressed. I was not in bed during this transaction. After we separated on that day, I did not see Mr. Coddington or anybody from his store in reference to this business, until after my return to the city. All the notes I signed at this time I signed there. I think Mr. Newton and this boy went away together that morning. I knew that Mr. Newton was going down there with the papers. The bonds were already there in the safe; so I understood. I cannot say that I knew Newton was going to deliver the bonds, any more than they were delivered.

72 I knew they were in Coddington's hands. I had a telegram sent as far as the telegraph-lines extended at that time, to St. Paul, immediately after the execution of this contract. It was, in substance, "interest on State bonds provided for, and a thousand tons of iron purchased." I started for home the next day, which I reached, according to my present recollection, on the 28th, and I wrote the letter of April 30th as soon as I could communicate with Judge Nelson. We lived some distance apart. I do not recollect any communication in writing being mailed to the firm of Coddington & Co., except this letter of mine of the 30th of April and that of the seventeenth of May, inclosing the resolutions of the

13th of May. The next thing after these letters in the spring of 1859 that occurred, as far as I know, between the company and Mr. Coddington on this subject was our interview. I had correspondence with Mr. Newton, and I think also with Mr. Coddington, beside that—something about an extension of time. I have forgotten the particulars. There was some reference to the contract, and I think I wrote him for a copy of it, and made him some new proposition; the particulars I don't remember. There was some correspondence between us between May 31st and the time of my calling on him in the fall of '59.

73 Witness identifies as written by T. B. Coddington & Co. to the railroad company a letter of June 28, 1859; two letters written by witness, dated July 15 and July 22nd, being Exhibits No. 12, 13, & 14, which defendant's counsel read in evidence, as follows:

EXHIBIT No. 12.

OFFICE OF THE MINNESOTA & PACIFIC RAILROAD COMPANY,
St. Paul, July 5th, 1859.

Messrs. T. B. CODDINGTON & Co.,
New York City:

GENTLEMEN: I have duly received yours of the 28th ulto. When Mr. Newton left here for New York, I handed him a duplicate contract made with you without retaining a copy. If you will have the kindness to forward me a copy, or, in case Mr. Newton has the original, send that at your earliest, I will, on its receipt, send you a definite reply to yours of the 28th ulto. In the mean time I should be pleased to hear from Mr. Newton, or, if you should happen to meet with him, may I ask the favor that you will show him this.

Yours, with much esteem,

EDMUND RICE.

EXHIBIT No. 13.

OFFICE OF THE MINNESOTA & PACIFIC R. R. Co.,
St. Paul, July 22nd, 1859.

74 Messrs. T. B. CODDINGTON & Co.,
New York City:

GENTLEMEN: In a letter received from Wm. H. Newton, esqr., dated July 5th, he mentions incidentally that your Mr. Nicholas had written you that he could purchase iron for this company on favorable terms with Minnesota State railroad bonds, provided the company would guarantee a market-price to the bonds in two years. I send a reply to Mr. Newton by this day's mail; but not knowing that it will reach him immediately, I desire to say that this company is prepared to purchase 7,000 tons of iron, if they can do so at the market-price on a credit of two years, with interest at 7 per cent. per annum, and place the Minnesota State railroad bonds as collateral at 95 cents on the dollar.

I am, with great respect, yr. obedient servant,

EDMUND RICE,
Prest. Minnesota & Pacific R. R. Co., St. Paul, Minnesota.

EXHIBIT No. 14.

NEW YORK, *June 28th*, 1859.

EDMUND RICE, Esq.,
Prest. of Minnesota & Pacific Railroad Co.:

DEAR SIR: You will please to take notice that before were informed

that your company would not be able to carry out the contract with us for railroad iron, bearing date the 21st day of April last, we
75 had made arrangements for iron to some extent, with the view and intention of giving you the notice prescribed by the contract, so as to make it an absolute contract for 3,000 tons. We now give you notice, according to the provisions of the contract, that we elect to make the contract one for three thousand tons, deliverable as expressed in the contract. This, of course, gives you the right to withdraw the letter by which the company announced their inability to fulfil, on their part, if you elect so to do; and, in that case, on your making up the deposit of the bonds to the amount required by the contract, we shall hold ourselves in readiness to proceed on our part. But it is manifest that, in a matter of such magnitude, you should act promptly; and unless, therefore, we shall, within a reasonable time, receive written notice from you that you will go on with the contract, and by that time you deposit with us the residue of the $100,000 Minnesota State bonds, we shall consider you as finally renouncing the contract, and act upon that footing.

We remain, dear sir, yours, respectfully,

T. B. CODDINGTON & CO.

Defendant's counsel also read in evidence the resolutions (Ex.
76 10) and an act of the legislature of Minnesota to submit to the people an amendment of the constitution in reference to the issue of bonds for the building of railroads, as follows:

EXHIBIT No. 10.

MINNESOTA & PACIFIC RAILROAD COMPANY,

Secretary's Office.

At a meeting of the board of directors of the Minnesota and Pacific Railroad Company, held at the office of the said company, in St. Paul, on the 13th day of July, 1858—present, Messrs. Woodbury, Prince, Rice, Newton, Thompson, Hatch, and Lynch—the following resolutions were adopted:

Resolved, That this company hereby authorize and direct the execution, on the part of the company, of the first-mortgage deed, the form of which was approved by resolution of this board, dated June 28, 1858.

And whereas the interest of the Minnesota and Pacific Railroad Company require that no default in the performance of the conditions under which the credit of the State of Minnesota has been loaned to this company shall occur, and that means shall be promptly provided, with the aid of said loan of State credit, to construct 100 miles of road at an early day, thereby vesting in the company the right to sell, unconditionally, 384,000 acres of land: Therefore,

Resolved, That Edmund Rice, president of the Minnesota & Pacific Railroad Co., or any agent or agents duly appointed by him
77 in writing to execute the trusts and powers conferred by this resolution, be, and are hereby, authorized and empowered, in pursuance of section 21 of the charter to sell, loan, pledge, hypothecate, or otherwise dispose of the first-mortgage bonds of the company in conformity to the provisions of the trust-mortgage deed of said company at par, or any price less than par, and for such sum or sums as to the said Rice or agents appointed by him shall appear most for the interest of the company; and the said president, or such agent or

agents as he may appoint, is and are hereby authorized to borrow such sum or sums of money for such length of time and for such rate of interest as to him or such agent or agents may seem proper, for or on behalf of the company, and also to purchase such quantity of iron rails, locomotives, cars, tenders, rolling-stock, and machinery for such road, and upon such terms as he or such agent or agents may deem advisable, and to make, execute, and deliver, in the name and on behalf of said company, such obligations, bills of exchange, contracts, and agreements, in writing, as will enable him or such agent or agents to carry out the powers and authority above conferred upon him or them, making monthly reports to the board of his acts in the premises, all
78 which acts thereunder done are hereby ratified and confirmed; provided, that the whole amount of obligations to be incurred on behalf of the company under this resolution shall not exceed the sum of seventeen hundred and fifty thousand dollars.

A true copy from the minutes. Attest:

[L. S.] JAMES W. TAYLOR,
Secretary.

Witness also identifies as written by him to W. H. Newton three letters of May 24 & July 16 & 30, 1859, being Exhibits 15, 16, & 17, which defendant's counsel read in evidence as follows:

EXHIBIT No. 15.

OFFICE OF THE MINNESOTA & PACIFIC RAILROAD CO.,
St. Paul, May 24th, 1859.

WM. H. NEWTON, Esqrs., *present:*

DEAR SIR: Herewith I hand an attested copy of a resolution of the board of directors of this company, authorizing you to proceed to New York and obtain from Messrs. T. B. Coddington & Co. a surrender of the contract made with them on behalf of this company by myself, as president thereof, on the 21st day of April last, and a surrender of the 45 Minnesota State bonds transferred to them in pursuance of said contract.

I also hand you a letter of credit of April 21st, 1859, signed by them, together with the duplicate contract above referred to, which
79 original papers you will cancel and deliver over to them in case of an adjustment of the matter, which I trust you will make in a manner satisfactory to the parties concerned.

I have not explained to Messrs. Coddington & Co. the circumstances which have occasioned the inability of the company to carry out the agreement, for the reason that you are familiar with them, and could do it better at a personal interview. I have forwarded to them a copy of the enclosed resolution by mail some days since.

Please advise me of the progress you make in the matter at your earliest convenience.

Very respectfully, your obedient servant,

EDMUND RICE, *Prest.*

EXHIBIT No. 16.

OFFICE OF THE MINNESOTA & PACIFIC RAILROAD CO.,
St. Paul, July 16, 1859.

WM. H. NEWTON, Esqrs.

Special Agent Minnesota & Pacific R. R. Co., New York City:

SIR: I have the honor to advise and request that you will not make any settlement with Messrs. T. B. Coddington & Co. under the authority

conferred upon you by a resolution of the board of directors of this company of the 17th of May last, which shall involve the pay-
80 ment or retention of more than five of the Minnesota State railroad bonds now in their hands as a full satisfaction for the surrender of the contract made with me, as president, &c., on the 22nd of April last.

Yours, very respectfully,

EDMUND RICE,
Prest. M. & P. R. R. Co.

EXHIBIT No. 17.

OFFICE OF THE MINNESOTA & PACIFIC RAILROAD CO.,
St. Paul, July 30th, 1859.

WM. H. NEWTON, Esqrs.,
New York:

SIR: Your letter of the 23rd ulto., informing me that you have been unable to obtain a surrender of the contract made with T. B. Coddington & Co. by the president of this company, and in which you also state that you consider your agency at an end from that date, has been received. Regretting that your efforts have not been successful, I have to request that you will send me by mail, at your earliest convenience, the duplicate contract made with Coddington & Co., (as we have no copy,) as also such other original papers as you may have relating to the matter, together with the order of Judge Nelson, acting president, &c., for the 45 State bonds in the hands of Messrs. Coddington & Co.

Be pleased also to forward your account for services & ex-
81 penses connected with this business, and it will be at once adjusted.

Very respectfully, yr. obt. svt.,

EDMUND RICE,
Prest. M. & P. R. R. Co.

Witness resumes. In the letter of July 16 (Exhibit 16) I spoke of the contract of April 22; it should have been 21st; I wrote from memory. The order referred to in the letter of July 30 (Exhibit 17) is the order dated May 14th, (Exhibit 6.)

Defendant's counsel reads in evidence order marked No. 6, from Nelson to Coddington.

This was the state of correspondence between the parties at the time. I came down here in the fall. I came here in the latter part of September or early October. There was no officer or agent of the company with us. Mr. Newton was at Orange, New Jersey, at the time I arrived. His family were there, and he was residing there that summer. I did not see him before I went to see Mr. Coddington. I think that all my conversations whatever with firm were with Mr. Coddington. I only had one interview with him before I was served with the process of the suit against the company. This process was not against me personally, but against the company, served on me as president. This conversation was at defendants' counting-house. I have stated substantially what
82 I said, and I cannot give you the exact words. I told him that, Mr. Newton having retired from the business, I had come down to get a return of the bonds and a surrender of the contract. By business I mean negotiations. I told him what my understanding was of the conditions under which the papers were left there. I said to him that my under-

standing was that the papers were not left to take effect except after the contract was ratified by the board of directors and we were able to send down the 40 bonds; that we regretted very much our inability; that it was a disappointment to us, but nevertheless we could not help it. I told him if he was particularly injured or damaged, we desired to know to what extent. I don't recollect whether he said anything; he may have made some remarks; I only profess to give the substance of the conversation. I cannot give the exact words. I stated what I had written in reference to the disposition of the 40 bonds, and I told him that if these bonds had not been disposed of by Judge Nelson, the company would undoubtedly have ratified the agreement. I don't recollect that I gave him any other reason for my inability to comply with the contract, except that matter of the 40 bonds. There was no other reason that I know of; that was the moving reason; that was the company's
83 inability to deliver the bonds. In answer to this, or while this was going on, Mr. Coddington said substantially, that so far as question in dispute was concerned, the question of damages, he preferred to leave it to some merchant or merchants. He did not state to me what offers of settlement he had made to Mr. Newton. I don't understand that he had made any; I don't know that he had made any. He did not state to me the terms on which he would be willing to settle the contract between us. I don't recollect his stating to me that he would settle it on the difference between the market-value and the contract-price and an allowance to our company by reason of the business not being actually done. He may have said something it; he may have said something about the contract-price and the value of the iron. I think it probable he did make some reference to it. I did not understand that was the terms he required. I think he mentioned it. I understood from him that it was all the questions that were in the matter that he was willing to leave to any merchant in the city; that is, the general question of a settlement between him and the company. I understood that it was whether he had any right to the bonds. I cannot undertake to give the language that he used, anything more than the substance. In reply to that statement on his part, I said I did not
84 think there was anything to refer; that if he understood the matter as I did, and as I supposed he did, we could settle the question ourselves, if we understood it alike, if we were honest men, as I supposed we were. I told him if we understood it alike, we could settle it, and there was nothing to leave out. As to the mode of settling it, I proposed to bring Mr. Newton, and talk the matter over face to face, and see if we could understand it alike, all round, and upon that I left. I was then served with the process, which I took to my lawyer, in all probability before seeing Mr. Coddington again. Judge Barbour was our counsel; he (Judge Barbour) had been employed by our company before; we had another gentleman employed also, associated with him. I saw Judge Barbour personally about it at this stage of the matter. I saw Mr. Coddington after this process was served upon me. I went there, I think, with Mr. Newton first; he and Mr. Coddington had a good deal of conversation together at which I was not present. It was probably within 3 or 4 days after this process was served; it may have been a week, I don't recollect the precise time. I had searched out Newton and brought him there. The suit was brought in the supreme court, I think. I had some conversation then with Mr. Coddington about that suit; I cannot pretend to give the exact language,
85 but the object of the conversation was to induce me to enter an appearance for the company in the suit, so as to have the trial

come on speedily, and settle the controversy in that way, and I think I assented to it. I think that Mr. Newton said to him that we desired, if the result of the controversy was against the company, that he should get his pay against it out of other property than these bonds, and that we should be able to point out the property; and he (Mr. Newton) asked if there was other property in my presence, and in reply I said that the company had other property, and that could satisfy the judgment. I concurred in that—that if the judgment should be against the company, Coddington should seek other property to satisfy the debt besides these bonds, and that I could point it out. I did not directly give him as a reason for that that I had an interest in these bonds, and that if they were liberated from the contract they would enure to my benefit. On that subject I said to him that I probably said it to Mr. Newton. I don't know whether Mr. Coddington was present or not. I said that the bonds belonged to Major Hatch, and if they were obtained—(objected to)—I did not give Mr. Coddington as a reason that I had an interest in these bonds, and that if they were relieved of this contract they would enure wholly to my benefit. I don't know as
86 I said to Mr. Coddington—I may have said it in his presence to Mr. Newton—that the bonds belonging to Major Hatch—(objected to)—I propose to state it just as I said then. I did not say it to Mr. Coddington in those words; possibly I said something on that subject to Mr. Coddington. I think I did. I think I said something to him about their enuring partially to my benefit; that I had authority to use a portion, a small portion, of them to the extent, I believe, of about $3,000. I told him that Major Hatch owned them. After this I was aware of the progress of the suit as it went on against our company. I was not here all the time, but I was probably tolerably well informed. I don't think I was here for about a year after that; it may have been more than a year. My deposition was taken as a witness on the trial. I think Mr. Hatch was a witness; but whether for the company or not, I do not recollect. I think Judge Nelson was a witness. I don't recollect at whose instance the commission was issued. I recollect that we answered interrogatories before the commissioner. This is my signature [shown to witness] to the deposition in the case of Coddington against the Minnesota and Pacific Railroad Company. That is the signature of Mr. Thompson, (referring to a signature to a deposition in the same case.) I don't know as he was a director at that time;
87 he had been. This is Judge Nelson's signature, (to a deposition in same case.) This is Mr. Hatch's, the plaintiff in this case, (to a deposition in the same case.) I don't I was present when Mr. Hatch was examined. I believe not. We went in scatteringly, as the commissioner could catch us. Judge Nelson told me that he had turned over the 40 bonds to Mr. Chamberlain, and so it was impossible for us to send them on. Mr. Selah Chamberlain is a contractor, and these bonds had been turned over to him.

By the COURT. He was a contractor in the building of that road.

Judge Nelson received $16,000 in money from Mr. Chamberlain as a loan, giving the company's note therefor, and, as I understood, gave Mr. Chambarlain the 40 bonds and took his receipt therefor. My view is that he receipted for them to apply on his contract, and that he let the company have $16,000, taking therefor the company's note; that he only furnished it on condition that he received the bonds. I don't understand that he held these bonds as a collateral security for the $16,000; it might have been so, but, as I understand it, he took the company's note simply for the payment of the money, and he applied

the bonds to the credit of the contract. The whole $40,000
88 of bonds, as I understood it, were turned over to Chamberlain as payment of advances under his contract. The transactions were coupled together. I understood it that if they would turn over 40 bonds on his contract, he would loan them $16,000 on their note. This matter had all been done before I got home. I am stating it as I understood it from Judge Nelson. I executed the paper marked "A" as president of the company. Mr. Chamberlain, who is here mentioned as the assignee of these bonds in the hands of T. B. Coddington & Co., gave his receipt for these 45 bonds to apply on his contract. That receipt was in writing. I have not the receipt here. There is such a receipt in existence. I know where it is. I do not know whether Mr. Hatch paid anything to Mr. Chamberlain upon this transfer (marked "B," from Chamberlain to Hatch) for these bonds. This assignment from Chamberlain to Hatch was a payment from Chamberlain to myself. Mr. Chamberlain was indebted to me for a very large amount of money, and we settled our account on that occasion. The amount of money was called a $100,000. There was no accurate computation of the amount at that time. There had been before that a general computation. It was not very accurate. It was an understood
89 amount, understood between us at $100,000. It was for money advanced and for services advanced by me for Chamberlain, and under his direction, from my personal means, at Chamberlain's request, and for services performed. It was for money advanced and for liabilities incurred. I cannot state how much of it was for money, cash advanced. I have no idea. I cannot state particularly. I claim to have advanced money in the neighborhood of $100,000 cash. It was in part for liabilities that I had incurred and had not wholly discharged. You have all I know about the amount of cash which I had paid. I have no memorandum here. The liabilities that I had incurred that went into this $100,000 were promissory notes I had executed to raise money on, but not endorsed for him. I had raised money there which I had advanced for his benefit. There were some outstanding notes I had given (I don't now recollect the particulars as to how many) I had not taken up. I afterwards took them up. I took them all up myself. The amount of these originally, some 40 or $50,000. I cannot say how much cash I paid for this account on liabilities then outstanding. I would not undertake to state the particular amount. The services I rendered him were for aiding in the obtaining of contracts for the
90 construction of the road—one for the construction of the Transit Railroad, and the contract for the construction of the Minnesota and the Northwestern Railroad, and for having generally promoted his interest in that State. He was a large contractor, and had other roads than our own, and I undertook to assist him in reference to negotiations for these railroad bonds when I was here and in Washington—Minnesota State bonds issued to him for constructing this road and other roads. I took this assignment to Hatch from Chamberlain in part payment of Chamberlain's debt to myself. I settled the rest of the debt with him. Besides that, I took 40 Minnesota State railroad bonds; not the same 40 bonds that could not be forwarded to Coddington, but a former issue; they were in Milwaukee. I took them from Chamberlain, and he sent a gentleman on there to get them. The 40 bonds that I received were not the same that I said the company had delivered up to Chamberlain. I took in this settlement an order for 40 bonds of the State issue, but I don't recollect whether the issue was for the same company. I think they were issued to some other company;

he sent to Milwaukee for the purpose of getting them. I have not a very distinct recollection of what these bonds were. They
91 may have been issued by the State to this company; I mean these forty bonds. Mr. Chamberlain had accepted my drafts for $12,000, and he gave me a receipt in full for that. This went to make up the $100,000. He had paid my drafts. We had a running account for two or three years, and he gave me a receipt in full. That was a settlement of the matters between Chamberlain and myself. It was simply a settlement of our actual indebtedness. For the $100,000 he paid me and the $12,000 I owed him on these acceptances, I made this settlement, taking the 85 bonds, and we passed receipts in full. I have not got those receipts here. I don't know whether I gave him a receipt or not. I took his. I would not be positive whether I gave him any receipt. I do not know whether I gave him a receipt then. He gave me a receipt for his account against me. I don't recollect whether I gave him a receipt. I know we had a settlement of the whole thing. I paid out the 40 bonds for my debts. As between me and Chamberlain, I kept them; and as between myself and the company, the company had nothing to do with them. I took them as my own property and paid them out. I do not owe the company for them; the company had nothing to do with it in any way, with the 40 bonds. I
92 took this assignment of Chamberlain to Hatch as equivalent to the 45 bonds given to me. The reason the assignment was not made to me and then another made by me to Hatch was to avoid a multiplication of papers; that is all, and the only reason. It was in discharge of my indebtedness to Hatch that he paid for these bonds. I owed him a past debt. I considered at the time it was $300,000, and we have always considered it that amount, and so agreed. Hatch had been attending to my business for two or three years in selling real estate and taking care of my affairs generally. He had advanced money for me and incurred liabilities. He was an endorser on paper of mine to the amount of twenty, thirty, or forty thousand dollars then outstanding; this is how I came to be indebted to him. He was also an accom'adation maker. They were not his debts, but mine, and he had given his name in aid of my credit; I think he had paid some of them for me; I don't recollect. I think about $15,000 of this $30,000 was for services. He had charge of the books. I did not look at them at that time. He was engaged at $5,000 a year to supervise my affairs—not the company's affairs; my own private affairs. I had never paid him. He had kept my accounts, and perhaps he may have received some portion. I think I owed him for about three years' service, and I took this
93 opportunity to pay it. As to the other $15,000, I cannot say how much of it was for cash which he had advanced. I don't think I have ever looked at the accounts since. I have never paid any attention to them. I lumped this matter. Mr. Chamberlain agreed here in New York months before that to strike a balance. It was the St. Nicholas Hotel. This arrangement in St. Paul was simply in pursuance of that agreement. The payment of the 85 bonds was in pursuance of the amount understood. He agreed here at the hotel to pay me $100,000 in money. He had railroad securities, and he went to Connecticut for the purpose of raising money there; not on these 85 bonds, he had other bonds besides from other companies. The balance was struck at the St. Nicholas Hotel, and he endeavored to raise the money to give me the cash, but he did not succeed in doing it. I settled, as I have described, at St. Paul, so that, if the transaction had been carried through according to its occurrence, there would have been an assignment from Chamberlain to me of 85 bonds and from me to Hatch of 45 bonds.

Redirect examination:

I was here with Mr. Chamberlain, at the St. Nicholas Hotel. I think it was in January, 1859. He then had $400,000 worth of the bonds of
94 the company. He was a contractor on other roads. He was the man who had done all the work on this railroad, and to whom I gave the bonds. The money which he spent as contractor on this road he was paid for with the $500,000 of bonds which this road obtained from the State. I had known him since 1857. I had known him before. I believe that was my first acquaintance with him. I don't know but I met him before in Milwaukee. He was a contractor. When I knew him first I had no particular business. I was soon after president of this railroad company. I was president of that company as long as it continued to hold meetings. I have been president of, and am now president of, two other railroad companies. I am president of the St. Paul and Chicago Railroad Company, and the St. Paul and Pacific Railroad Company. About 60 miles of the St. Paul and Chicago Railroad Company is in operation; the rest is in course of construction. Its length is 101 miles. I had no knowledge of the transfer of these 40 bonds before I saw Judge Nelson, or any intimation that they had been transferred. I had nothing to do with the transfer of the 40 bonds which the company owned. They had been transferred before I reached there, and the first I learned of it was from Judge Nelson himself. These 40 bonds which I received from Mr. Chamberlain in Milwaukee were in his pos-
session. He sent to his cashier for them. He had a cashier in
95 Milwaukee and an office there, and the bonds were sent from them to me. He sent a messenger for them, and the messenger went and got them and gave them to him. I cancelled obligations with him. I do not know what use had been made of the 40 bonds by Mr. Chamberlain received from the company. I do not know what he did with them. At this time Major Hatch resided at St. Paul. His residence has been there, I believe, some 20 years, but he has been absent a great deal of the time. He was absent as agent of the Blackfeet Indians. Then he was absent in the service of the country. He commanded an independent ba'tal*l*ion during the war. Then, I think, he was a special agent for some other tribes in that State. The Blackfeet Indians were in Montana—or the Crows; I don't recollect the tribes—I mean he was an Indian agent. I am uncertain that I said to Mr. Coddington, but I said to Mr. Newton or to him, that those bonds belonged to Mr. Hatch. I told him that I was permitted to use about $3,000. I don't say it was for my private use. I had authority from Major Hatch to appropriate that amount. I was authorized to sell them if I received them. The three bonds I sold were not three of those 45; they were
three of the fifteen which were sold of the 100. The amount of
96 my salary as president of the road was $5,000. These bonds were charged to me on account. I have forgotten whether they were charged to me at 60 @ or par. It was one or the other for all the 15, I think, but I am not positive. I am speaking of the three. I think Major Hatch sold the balance for my account. I think he turned over the whole proceeds to me. I know the accounts were adjusted with the company at St. Paul after we got home. These are all I accounted for—the proceeds. I left in September for the company, went to Washington, Philadelphia, and here. I was pretty well occupied here. I think our bonds were mainly executed here. The line of the road embraced 700 miles.

Recross-examination:

On my way out from here I stopped at Milwaukee. I saw Mr. Chamberlain there. I think he did not go on with me to St. Paul by appointment. I then talked over this matter of the bonds with Mr. Chamberlain, at Milwaukee. I do not think he told me he had got the 40 bonds from Nelson; he might have done so. He was aware of the telegram that had been sent, and he introduced the subject. I supposed that he took it off from the wires. He commenced by saying: "You've been raising some money, have you not, or trying to raise some money, to make a contract for iron?" I said: "Yes." He was very much
97 offended, and talked very offensive, because we had attempted to go outside of his contract, or what he called was his contract. There was difficulty between him and the company at home. I would not undertake to repeat all the conversation there, but the substance was, that he was very much displeased with the arrangement that he had got information of. I could not tell how he got it, unless it was surreptitiously got from the wires. My recollection and belief is that he did not tell me that he had got the 40 bonds. I may be mistaken. I have been mistaken many times in my life. My belief is now that I did not know of his having the bonds until I got the information from Judge Nelson. I do not think, in the conversation between I and Chamberlain, that he told me the contract would be broken, or that I could not carry it out. I could not undertake to say all that occurred; we were considerably excited, both of us. Mr. Nelson was present, and his recollection, probably, is better than mine, or just as good. I don't know as it is any better. I don't think Mr. Chamberlain told me that that contract could not be carried out; that he would break it up, and that he got the bonds. I would be taking a pretty big oath that he did not. I will swear that I don't believe he did. I got the 40 bonds
98 by order of Chamberlain; 40 Minnesota State railroad bonds; I sent a messenger to get them. I know who it was: William H. Acker. I do not know the number of those bonds; I do not think I took the numbers. I cannot say as to the numbers now of the 40 bonds that were handed over to Chamberlain by Nelson; I perhaps knew them at the time. I do not think the bonds I got from Chamberlain were the 40 bonds which Nelson had given. I am not able to say, from knowledge, any further than that what makes me think they not. I think they were some that were issued by the Southern Minnesota Railroad Company. I do not recollect having told Mr. Coddington or Mr. Newton that the limit of my interest was $3,000. I may have done so. The last coupons of the Minnesota bonds was paid in May, 1859. I think there has never been any paid since; I state from recollection only. With the $16,000 that Judge Nelson received, we took up the coupons due. We paid our own coupons which were held by the State, and they were equivalent to so many of the coupons on the State bonds; we exchanged one set for the other. I don't think that the company got any money to pay the interest from the transactions of the 15
99 bonds. From the 40 bonds that went to Chamberlain they got $16,000. That was not from the 45 bonds; the $16,000 came from the 40 bonds. On the 45 bonds there was no money got to pay interest. I can only state from information from Judge Nelson how that $16,000 that was got was applied. I understood that there was some exchange of coupons. We had bonds deposited with the governor for the same amount of these outstanding bonds of the State which we had. Our coupons were due a month earlier. They were to be held until the State coupons were due, and then would be exchanged, as I

understood it. The company deposited with the State bonds of an equal amount with the bonds received our company from the State. If our coupons were paid on the bonds held by the State, that interest which we paid would be applied by the State to the payment of their coupons.

Further redirect:

I was present at the meeting of the company at which the assignment marked "A," to Chamberlain, was executed. I was about the building. I think Judge Nelson was in the chair a part of the day, and perhaps most of the day. I was present when the assignment was executed.

100 (To the court.) I was present when the resolution was put to vote and adopted; I mean I was present at the execution. It has a seal and two signatures. I was present when the seal was put on and the signatures made. The execution of the assignment preceeded the adoption of the resolution.

State what you said to Newton when you handed him the resolution (Exhibit 10) to deliver to Coddington.

(Objected to by defendant's counsel. The court sustained the objection, unless it is shown that the communication was repeated to Coddington, to which ruling plaintiff's counsel then and there duly excepted. I was present on the 13th May, 1859, when the resolution in reference to the arrangement with Chamberlain to complete the 62 miles of road was passed.)

Plaintiff's counsel read the resolution in evidence from the book of minutes as follows:

EXHIBIT 7.

ST. PAUL, *Friday, May* 13, 1859.

The board of directors of the Minnesota and Pacific Railroad Company, pursuant to adjournment.

Present Messrs. Rice, Hatch, Nelson, Newton, Prince, Ramsay, H. T. Wells, D. Wells, jr., Woodbury.

101 The following bases of an arrangement with S. Chamberlain was adopted by the board:

1. Chamberlain to subscribe to $500,000 of the capital stock, and pay five per cent. or $25,000 thereon by applying this sum upon the amount to become due him on the completion of his, extended or 30 miles contract. Books to be then closed except that the company may receive further subscriptions or issue stock, but it shall not interfere with the election of directors unless by mutual consent. The stock to be assigned to R. R. Nelson, and voted by him or such person as he may appoint. At the completion of this contract, on repayment of the $25,000 to Chamberlain or his assignee, the stock above named shall revert to the company.

2. Ten directors are to be chosen by the other stockholders, and five by Chamberlain.

3. The current expenses for engineering, office rent, salaries, &c., to be estimated, which Chamberlain is to pay, not, however, beyond the amount estimated and agreed upon.

4. The right of way to be obtained by the company, and paid for by Chamberlain, he to be re-imbursed by them.

5. Chamberlain is to complete 62½ miles and place the necessary

102 amount of rolling-stock thereon, if required by the company, which

is to belong to him until paid for. The road to St. Anthony to be completed and in operation with freight and passenger cars on or before the first day of January next, and the balance on or before the first day of November, 1860, the road to be operated by the company. The rolling-stock furnished by Chamberlain may, at the option of company, be retained and used in operating roads upon payment, monthly, of one-twelfth of its actual costs delivered on the road, with interest added, and not exceeding $25,000 per month for one year after completion of 62½ miles. Turn-tables and necessary buildings and fixtures for water-stations to be constructed by Chamberlain, at expense of the company, and as directed by the chief engineer. The expense of operating construction-trains to be advanced by Chamberlain, and charged to the company. At the expiration of one year from the time the rolling-stock has been retained and used by said company, and upon payment of the monthly rent for its use, it is understood and agreed that the company may purchase all of said rolling-stock for the sum of one dollar.

6. The present debts of the company incurred for the right of way, and current expenses, to be provided for by placing 45 State bonds in the hands of a trustee to be converted into money, and the pro-
103 ceeds applied in payment of the debts, or that satisfactory guarantees shall be given by Chamberlain to Judge Nelson that the warrants therefor shall be paid within 60 days.

7. The weight of the rail beyond St. Anthony to be reduced to not less than 45, and not to exceed 50 pounds per linear yard, and the benefit of the reduction to enure to the company, and not to Chamberlain.

8. The interest on the State bonds to be paid by Chamberlain until the completion of 62½ miles, and such payments to be accounted for by the company.

9. The State bonds to which the company may be entitled to be paid to him as fast as received by the company, from the State.

10. Provisions to be made as agreed upon for extraordinary expenditures, the amount to be ascertained by Messrs. Rice and Wells, on part of this company.

11. All the debts due to Mr. Chamberlain or to become due for interest on monthly estimates or cash advanced by him or to be advanced, to be carried by him until the completion of his contract, unless the company may be able to pay them before that time.

104 The other resolution passed at the same meeting is read in evidence by defendants' counsel, hereto annexed, being the resolution, a copy of which was sent to defendant, and is marked "Exhibit 4 a."

Cross-examined by Mr. Evarts:

These three years of services of Mr. Hatch, for which I paid him $15,000, were three years immediately preceeding the judgment. I do not undertake to say it was for three years, for I do not recollect the exact time. It was between two and three years. It was $5,000 a year.

RENSSELAER R. NELSON, for plaintiff, being recalled, testified:

The transfer of the 40 bonds, the remainder of the 85 bonds, to Mr. Chamberlain, was done some time during the month of April, I think, after the 15th.

By Mr. EVARTS. After the 15th?

It was after the 15th. I gave Mr. Chamberlain the 40 bonds in consideration that he would enable the company to pay $16,000 of the interest that was due on the first-mortgage bonds held by the State,

and that he would apply the 40 bonds for work already done by him for the company. I am now speaking of those 40 State bonds in my hands, the only ones remaining in my hands. My impression is that the $16,000 was due the first of May. The interest on State bonds was due
105 on the first of June, and we were desirous to pay the interest due the State, so as to enable the State to pay the interest on these bonds. The amount was $16,000, and Chamberlain furnished it, by giving me that amount of State-bond coupons belonging to him. Then I exchanged with the State auditor, for an equal amount of coupons on our mortgage-bonds held by the State. Ours were due the first of May, I think; those of the State on the first of June. For his coupons I gave Chamberlain the company's note of $16,000. This was ratified on the 13th of May, as appeared by the resolutions, and the note referred to in them. The State held the bonds of the company, and interest to the amount of $16,000 was then due. I gave them to the auditor; I can't recollect the time, but my impression is it was before the 1st of June. He gave me in exchange the interest-coupons of the bonds of the company, which were due on the first of May. It was not in writing. I think Mr. Rice presented the contract which had been signed by him. The contract was submitted that day to the board; it had been at several previous meetings. There had been several meetings held, and on that day again the contract was there.

Q. For what purpose was the contract then presented to the board on that day?

106 (Objected to by defendant's counsel on the ground that if admissable at all, what took place should be proved by the minutes of the board. Objection sustained by the court; to which decision plaintiff's counsel then and there duly excepted.)

Q. When that agreement the so-called contract marked No. 1, was present' to the board, was the subject of its adoption or rejection there discussed by members of the board in session?

(Objected by defen't's counsel on the ground that a written resolution had been sent to the defendants as the action of the meeting. Objection sustained by the court; to which decision plaintiff's counsel then and there duly excepted.)

Q. Did or not every member of that board in session on that day, express an opinion or decision as to whether that contract should be adopted or rejected; and, if yea, what was such opinion and decision then and there expressed?

(Objected to by defendant's counsel on the same ground. Objection sustained by the court; to which decision plaintiff's counsel then and there duly excepted.)

Cross-examined by Mr. Evarts:

I received a telegram from Mr. Rice, the president of the company, about April 22nd. I cannot say what time I got it. It was in
107 due course of mail from La Crosse; we had no telegraph lines extending to St. Paul. The length of time by mail from La Crosse to St. Paul depends altogether upon the loading of the boat. It was all by steamer at that time. I should think it would take from twenty to twenty-four hours, it might be longer. I got it, I should think, the 23rd or 24th. I could place the date of the day on which Mr. Rice and Mr. Newton got back from New York only as stated by them. It was before the 1st of May, and I should think the 28th of April, somewhere along there. My assignment of the 40 bonds to Mr. Chamberlain, was somewhere between the 15th and 28th. It was before the return of Mr. Rice, and

before the reception of the telegraphic dispatch from him. I can't say where Mr. Chamberlain was when I got that telegram. I do not recollect whether he was in St. Paul. He had been in the city of St. Paul, I think, within two or three days, before I received it. I do not know how long he was there at that time. I think I may have seen him; my impression is, that was the only time when he came to the office and the bonds were given him and the money was received to pay the maturing interest on our bonds. I do not think I saw him after that day; I could not say how long before that I had seen him. It may have been
108 a year or it may have been 3 months. I cannot say; I cannot place any particular time when I next saw Mr. Chamberlain in that city. He was the contractor upon that road. He was there the 13th of May, and my impression is that he was there before that. I think he may have been there the day before or two days before the 13th. I do not know. I cannot say whether he was there a week or two before. I don't recollect whether or not he was there at the time Rice and Newton got back. I don't think he was; I think he had left. I had not seen him. Mr. Chamberlain did not come there this day in April by my request. He came to demand from me the bonds to apply on the contract for work done. He did so at the time when this arrangement was made. I don't know that I saw him for a year perhaps before. I may have seen him within a year; I may have seen him within 3 months; I don't remember of seeing him within a year. Mr. Chamberlain demanded of me bonds in my possession, the 40 bonds. I don't know how he knew I had them. He demanded all of the bonds in my possession to apply on the contract, for work done. He claimed that his contract entitled him to the bonds as fast as the company received them from the State; that was the claim he made; my impression is that he made it then for the first time. I had heard of that claim before, I mean personally.
109 I should like to explain that answer. Mr. Chamberlain, through men who purported to be his agents, made a demand upon me shortly after I received these bonds in February from the State; I think after they had been returned to me, or perhaps it may have been before they had been sent to New York to be endorsed by the president of the company, Mr. Schute, and I think Mr. Shippard; he was an employee of Mr. Chamberlain, in charge of his works. I declined to give these bonds to those gentlemen. I declined to give Mr. Chamberlain the bonds, stating that I held them under a resolution of executive committee of the board of directors for certain purposes. I gave him the bonds after some conversation in which he related his grievances; it was during that interview or it may have been the next day. I possibly may have seen him on two successive days, as I said before. But I have no distinct recollection. I finally gave him the bonds. I don't recollect whether or not he left town immediately after I gave them to him. I don't think I kept a memorandum by numbers of the bonds I gave him; I think a memorandum had already been taken and filed. That is my impression. I think it was the custom of the company—of the secretary or treasurer—to preserve one. I think the record will show what the numbers were, but I don't know. I think I took a
110 receipt from Mr. Chamberlain for the 40 bonds to apply on his contract as so much paid to him at par; that contract is not the one referred to in the resolution of May 13th. It was the contract previously executed when he first became contractor on the road. This contract mentioned in this 13th of May resolution was a substitute for the preceeding contract and a new arrangement as far as it went. I don't know whether it covered all the ground in the old con-

tract. It was a new bargain between the parties made on that day, at least so far as the resolutions are concerned, made on that day. I gave Mr. Chamberlain the note of the company for $16,000. I think I took a receipt also from him for that note; that is all the transaction, with the exception, that when the note was given to him and the bond he gave me coupons sufficient—I think $16,000 worth of coupons of the State bonds which had been issued to our company by the State and turned over to him, as I have previously stated. The amount we were owing on the 1st of May to the State on coupons of our company's bonds, was in the neighborhood of $16,000. That is my impression. The rate of interest on our bonds was 7 per cent. It was an amount that would be covered by $16,000, as near as might be. The rate of interest of the State bonds was 7 per cent. also. I received no
111 money from Mr. Chamberlain. I delivered the coupons which came from their bonds to the State, and took back from the State the coupons on our bonds for an equivalent amount. My impression is I made that transaction within a very short time. I think I made it the 1st of May, if I recollect aright. If I recollect aright the interest on our bonds was about maturing on the 1st of May. They became due on the first of April, but the governor agreed to wait for 30 days. I made payment at St. Paul, at the capital, of the State treasurer's. The interview was between the 15th of April and the arrival of Mr. Newton and Mr. Rice; before their arrival. I received the telegram on the 23rd, or at farthest the 24th. This interview was before I received that. I don't think there is anything in the minutes of the executive committee concerning this transaction between me and Mr. Chamberlain more than the resolution authorizing me to dispose of the bonds. I don't think there is anything on that subject there. I think the ratification of my act is in the proceedings of the board of directors. I think there is, in the minutes of the board of directors on that subject, between the date of the transaction and the 13th of May, a ratification of the giving of the note for $16,000. My impression is that that is all the ratification.
112 I think that is all there is in the minutes. I think I first saw Mr. Rice on the day of his return, or the next day, and Mr. Newton at the same time. I don't recollect whether or not anything had passed between me and Rice or Mr. Newton on that subject until we met. I think not, however. I think the first information I had was the telegraphic dispatch as to what had been done by Mr. Newton with the bonds. I made no communication, only the instructions I have given. I don't recollect whether or not any communication was made by our company to Messrs. Coddington & Co. on that subject until the letter of May 17th. I made none. I gave the order to Newton on the 14th, during the discussion of the board. I don't think there was any communication. The land-grant became the property controllable by the right upon the completion of a certain number of miles of the road. There was an act published I would not like to repeat. It is among the *the* laws of Minnesota and the act of Congress. Our title accrued when the road had completed a certain number of miles, including the iron. But my impression is that 120 sections of land were disposed of for the purpose of surveying. My impression is the charter is in one of the books identified as the Session Laws. It is a concurrent resolution passed
113 on the 10th of March, 1860. I think I was examined as a witness in the case of Coddington against this company, in the supreme court in this city. I think my deposition was taken. That is my signature. I think it was taken on the 16th and 17th of April. I was examined on the part of the defendant, the railroad company. I

don't recollect how early I was apprized of the commencement of this suit against the company. I did not take any part in its defense, employ counsel, or in any way direct about it. I remained vice-president up to the close of the company. I would not give him the bonds until he gave me $16,000.

The counsel for the plaintiff here rested his case.

And the counsel for the defendant, to maintain and prove the said issue on his part, called WM. H. NEWTON, who, being sworn, testified as follows:

I reside at the present time at Hoboken, Bergen County, New Jersey. I have resided in the vicinity of New York with my family since October, 1859. I had been residing at St. Paul, Minnesota, since the spring of 1854, or 5, until I left there and I came here. Before that time I had resided at the east, in New York, and I was in the western part of New York, and I was also engaged in Ohio. I became a director in the Minnesota and Pacific Railroad Company in the winter of 1857; it
114 was not at the organization of the company. I think the company had been organized before. I continued to act as director until May 13th, 1859. There was an acting director. I was so designated, and appointed as such by the board. I was the acting director. I cannot say distinctly during what period, but my present recollection is that it was most of the time I was a director, but I cannot say positively. I know that there was an executive committee to that board. I was a member thereof, as I have before stated. I think most of the time I was a director. I am pretty positive I was, but I cannot say positively it was the whole time, but it was most of the time. I resigned on the 13th of May. I was a member of the executive committee until that time. Mr. Rice was president during the whole of the time I was director. Mr. Hatch was a director most of the time I was, and I don't know but all. He was a director during the year preceding my resignation. Judge Nelson was also a director. Mr. Hatch was a member of the executive committee, down to the time of my resignation. I think Mr. Hatch resigned at the same time I did as a director. I was well acquainted with Mr. Hatch. I had known him ever since I had been in the country, as also with Mr. Rice and Judge Nelson. I lived in St. Paul in the spring of 1859. I cannot say what period
115 Mr. Hatch returned from. He was an Indian agent to the Blackfeet Indians previous to this time, and returned; I cannot say whether it was in 1856 or 1856. I am unable to state distinctly, but my impression is that it was either in the fall of 1856, or in the summer of 1857, that he returned from being Indian agent; while he was Indian agent he was absent from St. Paul among the Indians. I think his station was at Fort Benton. The principal business Mr. Hatch was engaged in in St. Paul in the spring of 1859, and the preceeding years he was there, that I was aware of, was the attending to his duties as one of the executive committee of this board of directors, and looking after his own affairs, which of course I knew nothing about. I do not know that I can say of any other business that he was engaged in during that time. He was at the meetings of the directors, and was I presume in the office almost every day. I received this paper marked "D," from Mr. Nelson as acting president. I think Mr. Rice, the actual president, was in Philadelphia at that time. He was not then at St. Paul. I took these 45 one-thousand-dollar bonds with this paper marked "D.' I think they were handed to me by the secretary of the company or some one who had charge of them. I received them from Judge Nelson. I came to
116 the east. I attempted to negotiate them, under that order marked

"D." I think the first effort I made was in Philadelphia. There was a Mr. Burton there at that time, representing the company. I think he was a director. Perhaps I should say, altogether I remained a week in Philadelphia, attempting to negotiate a loan under that order. I might have been more or less; I cannot recall. It would take about a week to come down here into the city of New York. Then I came to New York. I did not succeed in making a negotiation of a loan or other transaction with these bonds under that authority. I endeavored to do so. I could not borrow from anybody on these 45 bonds on any terms. I saw Mr. Rice here, somewhere about the 6th or 7th of April. I think he came here, perhaps it might have been a day or two later; he stayed at the St. Nicholas Hotel. I repeated to Mr. Rice that I could not make any loan under that authority. We were together every day; he know all I was trying to do, and I knew what he was trying to do. When I came to New York here as I had generally done, I remained with my brother-in-law; he was an unmarried man, and I remained with him at his stud'o; I mean Mr. Eastman Johnson, the
117 artist. I had these bonds with me at my lodging with him. I afterwards took them to Mr. Rice, to his lodging; that was after Mr. Rice came here; I think immediately after he came here. During our absence of a Sunday, a burglar had broken into the rooms, Mr. Johnson's rooms, and had taken some personal property of mine and his, and it was considered unsafe; this was the cause of my taking them to him; they were there in my trunks, in my baggage, and I considered it unsafe. I took the bonds from there for fear they would be stolen; they remained in Mr. Rice's rooms, I should think, two or three days. Mr. Rice knew of their being there. I cannot recall what I told him, why I brought them, but I have no doubt that I did. While they were in his room we cut one coupon off from each bond; he took parts in it; they in Mr. Rice's *berau* draw; there they remained the days I have mentioned, and from some reason, I suppose we had a conversation between us, took them and went to a private banking-house with whom I had done business previously, on the corner of Greenwich and Cortland street, Mr. Laren & Brown, and asked them to put them in their safe. Mr. Rice knew I was to take them away for safe-keeping. The bankers thought I had better not leave them there, as there was no one in
118 the place at night, and they preferred not to take them. I then took them to Mr. Coddington's office, No. 78 Broad street, and asked some gentleman connected with the house for permission to place them in their safe, which they permitted me to do. I presume I told them what was in the package; I have no doubt I did; bonds having value; the package was not open' at all. It was a large, bluish, lien envelope that had been sealed when I left St. Paul. It was sealed up with tape around it, and when we were in Philadelphia I opened the package for the purpose of enabling parties with whom we were negotiating to see them; it was then tied up as one would tie up such envelopes and put in the safe. It remained there, so far as I know, until I took it and made the delivery of the bonds afterwards. The package was in the same condition when I took it from these parties as it was when I put it in the safe. I think it was addressed on the outside to me, or my name was on it, and on the outside was "45 Minnesota bonds." When I took that letter from Mr. Nelson, I gave this receipt (marked "E.") Mr. Rice and I began to negotiate to dispose of these bonds in the market; immediately on his coming to New York, I reported what I had done, and Mr. Burton, I think it was, from
119 Philadelphia, came on here, who was a personal acquaintance of Mr. A. T. Stewart, and through him they were presented to Mr.

Stewart for a loan, but that did not succeed. It was decided between Mr. Rice and myself that all our efforts we could not borrow any money on the bonds, while we were here. I met Mr. Nichols, of the firm of Coddington & Co., and we went to lunch together, as we had known one another before that, through my brother. I am brother to Mr. Newton, the United States Commissioner. He, (Mr. Nichols,) in a friendly way, asked me what I was doing here, and I told him I was here with Mr. Rice, for the purpose of effecting some arrangement by which we could carry out the purpose of building the road with which I was connected. The conversation was a general one, and he made a remark that he ought to be able to do something. I followed it up, as I was ready to take up anything that lead in that direction, and I reported to Mr. Rice that I had had a conversation with this gentleman, and that it was possible that I might open a negotiation with him. I carried on my negotiations with Coddington & Co., in regard to these bonds, as I supposed; it was about ten or twelve days altogether
120 before the contracts were signed or executed. During this time, I saw Mr. Rice every day several times a day. I think he was confined to his room almost entirely while he was here; I saw him in his room; I communicated to him the progress of the negotiation as it went on; I received from Mr. Rice some papers, to be handed to Mr. Coddington during the progress of this negotiation. I think these papers were the constitutional provision for the issue of the bonds. I think there was a resolution of the board of directors, authorizing him to purchase, or in fact giving him general authority to act. It was the resolution of July 13th, 1858, in my handwriting. I made it at the time I handed to Mr. Coddington the matters contained in that memorandum. (Reads from the memorandum.) "Charter of the Minnesota and Pacific Railroad Company, and grants of land." [See pamphlets.] There were pamphlets that set these forth.

By the court:

By these I mean I gave him some pamphlets. I gave him pamphlets in which were the charter and the grants of land. By a grant of land I mean a conditional grant of land to the company to help build the road. They were acts of legislature. (Reads:) "Act of the legislature proposing amendment to the State constitution, (see page 1 Laws.)
121 It was a printed pamphlet in which this act was printed. (Reads:) 3. Legislation concerning land-grant roads, (see page 178, Laws.) I cannot recall whether it was the same book. It was a book of laws there containing acts of the legislature, concerning land-grant roads. (Reads:) 4. certified copy of act authorizing amendment to constitution. It was in manuscript. (Reads:) 5. Copy of resolution authorizing the president of Minnesota and Pacific Railroad Company to purchase iron, execute contracts, &c., &c., (see copy of resolutions.) There is nothing here to designate, but I have no doubt that these papers I have mentioned & Exhibit No. 10 are the same." (Exhibit No. 10 handed to witness.) This is the resolution. (Exhibit No. 11 handed the witness.) I left that schedule or memorandum which I have just referred to at the same time. The memorandum is marked Exhibit No. 18 and is as follows:

EXHIBIT No. 18.

Newton's memorandum of papers as to power and authority.
1st. Charter of M. & P. R. R. Co., and grant of lands, (see pamphlet.)

2d. Act of legislature proposing amendments to State constitution, (see page 1, Laws.) 3rd. Legislation concerning land-grant roads, (see page 178, Laws.) 4th. Certified copy of acts authorizing *authorizing* amendments of constitution. 5th. Copy of resolutions authorizing president of M. & P. R. R. Co. to purchase iron, execute contracts, &c., &c., (see copy of resolutions.) Witness resumes: I received the pa-
122 pers marked "Exhibit *marked* No. 10" and "11," from Mr. Rice. I did not bring them from the West myself at all. I received all the other papers and books mentioned in the memorandum from Mr. Rice. I did not leave with Messrs. Coddington & Co. any other papers than those mentioned in the memorandum. I never showed the papers marked "Exhibit D" (produced to witness) to Messrs. Coddington & Co. I think the second day preceding the actual execution of the contract the terms had been agreed upon and reported by me to Mr. Rice. During that day or evening we had agreed upon the general terms, and on the day preceding the execution it was finally agreed upon. There was a draft determined by myself and Mr. Rice in Mr. Rice's room. I saw Mr. Coddington there at that time. I made an appointment for him to come and see Mr. Rice, with Mr. Rice's knowledge. Mr. Coddington came there; Mr. Nash was with him; Mr. Coddington and Mr. Nash came there in the morning by appointment. I was there to meet them. I went to Mr. Rice's room to say to him that Mr. Coddington wished to see him. I had previously made the appointment with Mr. Rice. He was getting up and dressing himself. I had been in the room before during the morning. The interview did not take place to my knowl-
123 edge. I went up to the room and found Mr. Rice there dressing, but whether Mr. Coddington saw him there or not I cannot say. There was no interview unless Mr. Coddington went with me—went up to the room, and of that I have no recollection. I cannot recall it.

By the COURT. How is that?

I had previously been to Mr. Rice's room and found him dressing himself, and I said to Mr. Coddington that I presumed he was then dressed, and would see him. I only know that I recollect the circumstance of the condition Mr. Rice was in—was dressing himself at the time Mr. Coddington was there for the purpose of seeing him, but any further than that I cannot recall the circumstances. I cannot say whether he did or did not go to the room with me.

Q. What did Mr. Rice say, if anything, as to seeing Mr. Coddington, to having an interview?

A. He said, I will be ready immediately, or in a few minutes, or something to that effect; that was when I was in the room; then Mr. Coddington went down with Mr. Nash, after I had been to Rice's room, and saw him to tell him that Mr. Coddington was there and wanted
124 to see him. Mr. Rice came out that day; he dressed himself, and prepared himself to come out of his room, which was the first time he had done it for a number of days. When the draft of this contract was there it was examined by myself and by Mr. Rice. Previous to engrossing of it I took it back to Mr. Coddington, and stated what was agreed upon with regard to it, and to know if there was any modification. He had it engrossed for execution. There was an appointment for the execution of the paper. It was this morning I refer to that it was to be executed. As near as I can recollect it was nine or a little after nine in the morning of the execution of this contract that Mr. Coddington called to see Mr. Rice. I think it was the same day that the contract was executed, that is the 21st. They went away. Mr. Rice was to have gone down to town to execute the papers there in

view of the fact that he had not done it when these gentlemen were there. He did not feel able to go down, and he requested me to go down and have them send the papers up for the purpose of being executed. I went down and stated this fact to the gentlemen, and their young man came up with me with the papers, and went into Mr. Rice's room,
125 and the papers were executed. The meeting for the execution of the papers, I think, must have been pretty near dinner-time—midday. The papers that were in the room at the time of the execution of these contracts were, the duplicate contracts, the letter of credit, three notes, a manuscript letter written and directed to Coddington & Co., and to be signed by him. (Two contracts produced to the witness.) this is the contract which was left with Mr. Rice, (the one written on blue paper and marked "No. 1ª.") This other contract acknowledged by Mr. Rice, and which I witnessed, is the one which was given to this young man, Douglass, (referring to the one written on white paper and marked "No. 1.") This is the letter of credit issued by Coddington & Co., (papers produced;) that was left there. These 3 notes were the ones left there, (referring to those marked 2 A, B, & C, respectively,) signed by Mr. Rice and handed to Mr. Douglass. The letter (referring to No. 2) was written after Mr. Douglas went away, was sent there, handed to me; when Mr. Douglass left I still had this paper. At the time these papers were executed and exchanged or delivered, nothing was said by Mr. Rice, or by myself, to Mr. Douglas, or in his hearing, as to any conditions of delivery. Nothing had been said at or before that time by me to Messrs. Coddington & Co., or anybody representing that firm, about
126 a conditional delivery or any conditions of delivery of the contract. Before that time nothing had ever been said by Mr. Rice to me about a conditional delivery of the contract. I still had this letter, (No. 2,) which I took and went to, Mr. Coddington's office, No. 78 Broad street. Mr. Rice knew of me talking that letter; when I went to Mr. Coddington's office I went to the young man who had charge of his safe, and asked him to give me the package I had placed there, and took the package out, untied it, and took out the bonds, and asked the gentleman to count them and see if they were correct. I gave him the letter at the time or previous to it. It was all one transaction. I gave the bonds to Mr. Coddington and came away. They were counted. Nothing further passed on my part or of which I had knowledge in the matter of this contract until I and Mr. Rice left for the West. I did not see Mr. Coddington or any body representing firm again. As to a telegram being sent, I think somewhere in the middle of the afternoon or towards evening we, Mr. Rice and I, went to the telegraph office in the house. Mr. Rice telegraphed to Judge Nelson that same afternoon. If I recollect right, the telegram was up to La Crosse at that time; from 24 or 30 hours might probably have brought it
127 through; it would probably. The 21st was on Thursday; this telegram was sent on the 21st, that afternoon or towards evening. I cannot remember the exact language of the telegram. I think it has been repeated here. The purport of it was this: "We have provided for the payment of interest on the bonds of the company, and have bought a 1,000 tons of iron." We started the next morning in the first through train. As to Mr. Rice's health on this morning and on the day when we completed this contract, he got up and was about, and seemed much better than he had been before. We travelled in the ordinary course as far as Milwaukee. I think we were there a day and a night, perhaps two nights and a day. I cannot recall. I know we there one night, and I think a portion of the day, if not all day. I think

there were no trains west of Milwaukee on Sunday. Leaving here on Friday morning we should have probably at that time been in Chicago on Saturday night in the ordinary course of travel. Whether we went the next morning, Sunday, to Milwaukee, I cannot say. I think there was a morning train on Sunday. I remember seeing Mr. Chamberlain there. My present recollection is that Mr. Chamberlain sought Mr. Rice out. I think he was boarding at the same hotel at which we were, or was stopping there. He came into the room while we were
128 there. I was present at an interview between Mr. Rice and Mr. Chamberlain at Milwaukee, at that time. I did not hear anything said at this interview by either of these gentlemen about these 40 bonds. The chief subject of conversation was about the contract we had made in New York, the difference in regard to these matters. I do not know whether Mr. Rice told him that or whether he knew of it. The fact was discussed between them. We went on the first opportunity. This interview was in the evening, and the next opportunity we went on. Mr. Chamberlain did not go with us. I cannot recall at what time we got to St. Paul. I think we got there somewhere in the forenoon of one day. After we got there I think I attended all the meetings of the board of directors. I was there at the meeting' of April 29th and 30th, 1859. Eight was the number necessary to make a quorum. I attended all the meetings prior to and including that of May 13th.

Defendant's counsel here read in evidence the record of the meetings of April 29th and 30th, May 6, 9, 10, 11, 12, and 13th, as follows:

EXHIBIT 22.

129 ST. PAUL, *Friday, April 29th*, 1859.

In pursuance of a call of the president the following directors of the Minnesota and Pacific Railroad Company assembled on Friday, April 29th, viz, Messrs. Rice, Newton, Nelson, Thompson, Steel, Hatch —6.

No quorum present. The meeting adjourned to Saturday, April 30th, at 10 o'clock a. m.

EDMUND RICE,
President.

JAMES W. TAYLOR,
Secretary.

ST. PAUL, *Saturday, April 30th*, 1859.

The board of directors assembled pursuant to adjournment.

Present, Messrs. Rice, Nelson, Newton, Prince, Hatch, Steel, H. T. Wells, Thompson—8.

Mr. Rice made some statements in regard to the policy of the company, and after discussion the board adjourned to Friday, May 6, 1859.

EDMUND RICE,
President.

JAMES W. TAYLOR,
Secretary.

ST. PAUL, *Friday, May 6*, 1859.

The board of directors of the Minnesota & Pacific Railroad Company assembled pursuant to adjournment, at the office of the company, in St. Paul, on Friday, May 6, 1859.

Present, Messrs. Rice, Hatch, Newton, Woodbury, Prince, H. T. Wells, D. Wells, jr., Thompson—8.

130 The following resolution was unanimously adopted:

Resolved, That the annual meeting of the stockholders of the Minnesota and Pacific Railroad Company is hereby appointed to be held at the office of the company, on Wednesday, 22d June, and that notice of the same be published in the Pioneer and Times newspapers of St. Paul, and in the St. Anthony Express as prescribed in by-law.

Adjourned to Monday, May 9, 1859.

EDMUND RICE,
President.

JAMES W. TAYLOR,
Secretary.

ST. PAUL, *Monday, May 9th*, 1859.

The board of directors of the Minnesota and Pacific Railroad Company assembled pursuant to adjournment.

Present, Messrs. Rice, Ramsey, Nelson, Newton, Hatch, Woodbury, Thompson, Prince, D. Wells—9.

A communication from S. Chamberlain, esq., was read, and after discussion was referred to the executive committee.

The board then adjourned to Tuesday, 10th of May.

EDMUND RICE,
President.

JAMES W. TAYLOR,
Secretary.

ST. PAUL, *Tuesday, May* 10, 1859.

131 The board assembled pursuant to adjournment.

Present, Messrs. Rice, Ramsey, Steel, Woodbury, Hatch, Newton, Thompson, Lynd, Nelson, Prince—10.

The executive committee reported informally upon the communication of Mr. Chamberlain. The report was laid upon the table.

Adjourned to May 11th, 1859, at 10 o'c. a. m.

EDMUND RICE,
President.

JAMES TAYLOR,
Secretary.

ST. PAUL, *May 11th*, 1859.

The board assembled pursuant to adjournment.

Present, Messrs. Rice, Ramsey, Nelson, Newton, Hatch, Woodbury, Thompson, Prince, D. Wells, jr.—9.

On motion of Mr. Prince a committee of four, consisting of Messrs. Rice, Ramsey, Nelson, and D. Wells, jr., were appointed to confer with Mr. Chamberlain upon questions raised by his communication, May 9th, 1859.

The board then adjou'ned to May 12th, 1859.

EDMUND RICE,
President.

JAMES W. TAYLOR,
Secretary.

ST. PAUL, *May* 12, 1859.

The board assembled pursuant to adjournment.

Present, Messrs. Rice, Ramsey, Nelson, Newton, Hatch. D. Wells, jr.. Prince, and Woodbury—8.

132 A report was presented by Mr. Rice from the select committee appointed to confer with Mr. Chamberlain, and after divers amendments thereto, its further consideration was postponed to May 13th, at 10 o'clock a. m.

The board then adjourned to Friday, May 13th, at 10 o'clock a. m.

EDMUND RICE,
President.

JAMES W. TAYLOR,
Secretary.

ST. PAUL, *Friday, May* 13, 1859.

The board of directors of the Minnesota and Pacific Railroad Company assembled at the office of the company pursuant to adjournment.

Present, Messrs. Rice, Hatch, Nelson, Newton, Prince, Ramsey, H. T. Wells, D. Wells, jr., Woodbury—9.

The following basis, upon arrangement with S. Chamberlain, was adopted by the board:

1. Chamberlain to subscribe to $500,000 of the capital stock, and pay 5 per cent., or $25,000 thereon, by applying the sum upon the amount to become due him on the completion of his extended or 30-miles contract. Books to be then closed, except that the company may
133 receive further subscriptions or issue stock, but it shall not interfere with the election of directors, unless by mutual consent. The stock to be assigned to R. R. Nelson, and voted by him or such person as he may appoint. At the completion of his contract, on repayment of the $25,000 to Chamberlain or his assignee, the stock above named shall revert to the company.

2. Ten directors are to be chosen by the other stockholders, and five by Chamberlain.

3. The current expenses for engineering, office rent, salaries, &c., to be estimated, which Chamberlain is to pay; not, however, beyond the amount estimated and agreed upon.

4. The right of way to be obtained by the company and paid for by Chamberlain, he to be re-imbursed by them.

5. Chamberlain is to complete 62½ miles and place the necessary amount of rolling-stock thereon, if required by the company, which is to belong to him until paid for. The road to St. Anthony to be completed and in operation with freight and passenger cars on or before the 1st day of January next, and the balance on or before the 1st day of November, 1860; the road to be operated by the company. The rolling-stock furnished by Chamberlain may, at the option of the company, be retained and used in operating roads upon payment, monthly, of one-twelfth of its actual cost per month for one year. After completion
134 of 62½ miles, turn-tables, and necessary buildings, and fixtures for water-stations to be constructed by Chamberlain at expense of the company, and as directed by the chief engineer, the expense of operating construction-trains to be advanced by Chamberlain and charged to the company at the expiration of one year from the time the rolling-stock has been retained and used by said company, and upon payment of the monthly rent for its use, it is understood and agreed that the company may purchase all of said rolling-stock for the sum of one dollar.

6. The present debts of the company, incurred for the right of way and current expenses, to be provided for by placing 45 State bonds in the

hands of a trustee to be converted into money, and the proceeds applied in payment of the debts, or that satisfactory guarantee shall be given by Chamberlain to Judge Nelson that the warrants therefor shall be paid within sixty days.

7. The weight of rail beyond St. Anthony to be reduced to not less than 45 and not to exceed 50 pounds per linear yard, and the benefit of this reduction to enure to the company, and not to Chamberlain.

8. The interest on the State bonds to be paid by Chamberlain until the completion of 62½ miles, such payments to be accounted for by the company.

135 9. The State bonds to which the company may be entitled to be paid to him as fast as received by the company from the State.

10. Provisions to be made, as agreed upon, for extraordinary expenditures; the amount to be ascertained by Messrs. Rice and Welles on part of this company.

11. All the debts due to Mr. Chamberlain or to become due, for interest on monthly estimates or cash advanced by him or to be advanced, to be carried by him until the completion of his contract, unless the company may be able to pay them before that time.

The following resolution was unanimously adopted:

Resolved, That the officers of this company be instructed and authorized to frame and execute a contract by this company in accordance with the foregoing report, and the same, when thus executed, is hereby ratified and confirmed.

[After looking.] I don't recollect of offering my resignation on the 14th; I did not attend any meeting on the 14th; I did not know of the assignment from the company to Mr. Chamberlain being made or proposed at the time it was made; I think I first heard of that assignment of the company to Chamberlain of the 45 bonds in the year following, in 1860.

Q. Did you know of the assignment from Chamberlain to Hatch
136 (marked "B") being made or proposed at the time it was made? If not, when did you first hear or know of it?

Q. The same time; the following year, 1860. I think it must have been here in New York that I heard of it, for I was here. I came down here in May, 1859. I knew of the resolution of May 13, 1859. I came down here with a letter from Mr. Rice to myself containing instructions. I have that letter; I received it from Mr. Rice. I came down here on the business mentioned in that letter from the company. I saw Mr. Coddington on behalf of the company. I had addressed Coddington & Co. written communications. The letter marked No. 5 [produced to witness] is a communication I addressed to them. I cannot recall what time I got there. It must have been the latter part of May or the 1st of June. I had also Judge Nelson's order (of which No. 6 is a copy) with me. After this letter I had further correspondence on this matter of my agency, in which letters passed from Coddington & Co. to myself, and from myself to Coddington & Co. I received a letter of June 15th from T. B. Coddington & Co., wrote them June 17, & received a reply June 25.

Defendant's counsel offered in evidence the letters of June 15th, 17th, & 25th, also of June 7th, Ex. 5, as the correspondence between the defendant and the agent appointed by the railroad company.

137 Plaintiff objected, and the court excluded the latter as a wh on the ground that two of them contained matters outside the scope of the resolution, but admitted the first clause and the last two clauses of Exhibit 5. To which decision plaintiff's counsel then and

there duly excepted. Exhibit 5 was then read in evidence by defendant's counsel, as follows:

EXHIBIT 5.

NEW YORK, *June* 7, 1859.

Messrs. T. B. CODDINGTON & Co.:

GENTLEMEN: I am by the resolution of the board of directors of the Minnesota and Pacific Railroad Company, adopted May 17th, 1859, authorized to procure a surrender of the company's contract, made by the president, Edmund Rice, esq., with your firm, under date of April 22, 1859, upon such equitable terms as may be agreed upon. I was, as the special agent of the railroad company, requested to obtain the surrender of the contract and bonds, and have here your letter of credit, and contract for that purpose, with the accompanying papers. You will please inform me at your earliest convenience upon what terms you will cancel and surrender this contract; also, if you will deliver the
138 bonds in your hands upon the order of R. R. Nelson, as acting president, a copy of which is herewith enclosed.

Very respectfully, your obd't servant,

WILLIAM H. NEWTON,
As Special Agent for Minnesota & P. R. R Co.

Defendant's letter of June 15 was then offered in evidence by defendant's counsel, and objected to by plaintiff as irrelevant; the objection was overrulled, and plaintiff's counsel then and there duly excepted. The letter was then read in evidence, as follows:

EXHIBIT 19.

NEW YORK, *June* 15, 1859.

Wm. H. NEWTON, Esq.,
As Special Agent for Minnesota & Pa. R. R. Co.:

DEAR SIR: In answer to yours of the 7th inst., in reference to our contract with the Minnesota and Pacific Railroad Co., for 3,000 tons of railroad-iron, we beg to say, that the act of the company in declining to carry out their contract leaves the question between us one merely as to the amount of damages. This we consider to be the difference between the contract price and the price at which we shall be able to furnish the iron, proper allowances being made in order to re-
139 duce the whole to a cash basis. This question we are willing to submit to arbitration, and when it is determined, we shall be willing to take the bonds in our hands, on account, at an agreed price, or to surrender them on payment of the amount so ascertained.

We remain, dear sir, yours respectfully,

T. B. CODDINGTON & CO.

I continued this agency of the company and these negotiations, I think, until some time in the latter part of July. I then surrendered to the company, and gave up the agency. I had made no arrangements. I corresponded with Mr. Rice, during these negotiations. I had no connection with this company at all after my surrender of this agency. Between the time of my resignation and my surrender of this agency I had no other connection with them than this special agency. The next I heard about this company and Coddington & Co. negotiating

about this contract was as follows: I think Mr. Rice came to see me in October, 1859. I was then living at Orange. He said to me that he had come down for the purpose of seeing if there could not be
140 some arrangement in regard to that matter, and he wished me to go with him and see Mr. Coddington. He did not mention to me at that time that a suit had been commenced against the company. I think I came to the city the next day, as near as I can recall. I think Mr. Rice then told me that a suit had been commenced against him. He told me that a suit had been commenced against the company before I saw Mr. Coddington I think I saw Mr. Coddington with Mr. Rice, or about that time. This was in the autumn of the year 1859, either in October or November. I recollect a conversation taking place between Mr. Rice and Mr. Coddington, but the particular language used I do not know that I could state. I can't pretend to give the exact language, but the substance was that Mr. Rice expressed solicitude to have this matter settled, and adjusted in some way, as something could be got out of it, and it would be for his benefit. During this conversation Mr. Rice said that the bonds would enure to his benefit, and he referred to me, and said: "Newton, you know that there is plenty of property: that Mr. Coddington, if he should get a judgment
141 to pay the judgment with," and he referred to the property as though I would know what it was. He specified the property and referred to it in general terms, by which I recognized it. I said at once in reply that there was property, in my opinion, that would pay the judgment without retaining the bonds. I have no recollection of Mr. Hatch's name being mentioned during that conversation. I had not heard or known in any way that Mr. Hatch had any concern in these bonds.

Cross examined by Mr. Stoughton:

I think I got acquainted with Mr. Coddington in the winter of '55 and '56. I was not on intimate terms with him in 1859. I was concerned with him in land speculations after 1856 and before 1859. I did not know him very well. I think I never met him but once or twice. I knew his partner, Mr. Nicholas, through my brother. I knew him by meeting him casually. I have some connection with the claim against this railroad company, growing out of this contract. I claim to own it. I had some other transactions with Mr. Coddington after 1859. I had no joint interest in a patent with him. I was connected with a
142 stock company and he advanced money to the company. I have been examined in this case before. My previous examination was before I became owner of the claim through Coddington against the railroad company. That was last December. My examination was before I claimed to be the owner of this claim. I cannot recall my testimony on that occasion now. I do not recollect saying that nothing was said between me and Rice as to his authority or want of authority to execute his contract. I do not mean to say that we had no conversation before the contract as to his power to execute it. In answer to the question as to whether there was any conversation as to conditions at the time this contract was delivered, my answer was positively no. On the last trial I testified thus: "I do not recollect anything being said about the contract not being carried out if Judge Nelson had disposed of the other 40 bonds." I cannot recall the language I used. I have no doubt I testified, "I do not think the question came up." I did not swear that that subject did not come up. I mean to swear
143 positively that I now recollect that nothing was said about the contract not being carried out if Judge Nelson had disposed of

the other 40 bonds. I mean to swear positively that I recollect that nothing was said. I have had nothing to refresh my recollection on that subject since the last trial. I do not think my memory is better since I became the owner of this claim. My recollection was that I closed all connection with this company except coming down here to get back these bonds on the 13th day of May, 1859. My recollection was I resigned on the 13th, but upon referring to the minutes, it was the 14th. I can recall the particular day from the fact recited there. I did show Mr. Coddington what authority I had to negotiate these 45 bonds with him, (Coddington.) I did not show him that authority I had from Judge Nelson to borrow $16,000 on the bonds. I had other authority than that. I left St. Paul with that authority in my hands, and I received the 45 bonds at the time I received the authority. I had no other authority than that at the time I left St. Paul. I had no
144 other authority in writing than this, (referring to the letter of Mr. Nelson.) Neither Mr. Coddington nor his partner knew that I was here to raise $16,000 for the company. This letter of credit given by Coddington & Co., authorizing the drawing of drafts to the amount of $16,000 upon them, is directed to me. I mean to say that I did not communicate to them that I was down here to get that $16,000 for the company. When I spoke of some other authority which was not written, I had reference to the supposed authority I had to negotiate with Coddington & Co. during the illness of Mr. Rice. That is all. I had no other authority than Mr. Rice, as president of the company. I remembered how many bonds the company had when I left St. Paul. I presume I knew they were in the hands of Judge Nelson; I think so. I have no doubt of that whatever. I knew that he had 40 bonds besides the 45 I took. I knew that that was all the company had at the time I left. I knew that they could have no more until another ten miles of road was completed and ready for the iron. I think I knew for what these 45 bonds had been placed in Judge Nelson's hands—the 100 bonds I should have said. The bonds
145 were placed in the hands of Judge Nelson, under the resolutions which have been read by counsel. My name, Wm. H. Newton, secretary, is signed to this. I had a knowledge of that resolution at the time it was passed. I know that the $16,000 which I was authorized to raise was to pay interest that became due on the bonds of the company. I think April 9th, 1859, was the day on which the interes t was due. I recollect that no part of the $16,000, mentioned in this letter of credit addressed to me, could be drawn until 85 bonds were deposited with Coddington & Co. I knew that 85 bonds were to be placed with Coddington & Co. as collateral before we could draw anything, so that the other 40 were not obtainable which were in the hands of Judge Nelson. No part of the $16,000 from Coddington could be got to pay this interest. I mean to say, knowing all this, that I can state that there was an absolute promise to deliver, or rather when this letter was delivered which called for the 40 other bonds, that it was not stated as a condition that if the other 40 bonds were disposed of, the other 85 could not
146 be deposited. I mean to say these papers were never delivered to me, in Mr. Rice's sick-room. They were delivered to Mr. Douglass. As they were executed Mr. Rice would sign one, and I would take it, and I presume I passed it to him. They did not pass through my hands. It is not my best recollection that these papers were delivered from my hands. I have no such recollection that they all passed from me to the hands of Mr. Douglass. I took this letter marked "Exhibit No. 2," down to Mr. Coddington, and it was not delivered by Mr.

Douglass at all. I do not recollect whether I retained it when I received it from Mr. Rice, or whether it was afterwards handed to me. I do not mean to say that this letter was first handed to Douglass and then handed back to me. I mean to say that each of the papers that were to go to Mr. Coddington after the completion or execution of the contract, were handed to Mr. Douglass, and that this letter I subsequently took, and went down to Mr. Coddington's office and there delivered the bonds in accordance with its purport. This letter was not delivered to Mr. Douglass at all. I witnessed that contract. I cannot tell in what way it passed to Mr. Douglass. I went to Philadelphia from St. Paul
147 after receiving the bonds from Judge Nelson with this authority. I found Mr. Rice there. I afterwards came on here. Mr. Rice followed me after some days. I think he was taken ill very soon after reaching here, if not immediately. I cannot say in regard to that. I think he left his room the very day before we left for St. Paul, because I recollect going to the telegraph-office with him. This was the day of the execution of the contract. I am positive I found him dressing and up in his room, in the morning when I came, because I recollect the circumstance of going to the telegraph-office with him. I know this was the day before we left. I can't recollect now where I found Mr. Coddington and Mr. Nash. I know that I made an appointment for them to come to the hotel. As near as I can tell I found them near or about the office. I cannot say whether I left them there or whether Mr. Coddington went with me to Mr. Rice's room. I went to Mr. Rice's room. I recollect seeing him there and speaking to him. I do not recollect Mr. Coddington's speaking to him.

Redirect examination:

148 I think it was in December, last year, that I acquired an interest in this judgment of Coddington & Co. against this railroad. I had none before that time. I am attempting to collect it.

Q. On your former examination, to which some reference was made by counsel in cross-examining you on this point of the contract, &c., I desire to read the question and answer: "Question. At the time of the examination and delivery of this contract, was it not agreed and understood that Mr. Rice should go to St. Paul and ascertain whether the company would satisfy that contract?—Answer. No, sir; nothing of the kind. I do not recollect anything being said about the contract not being carried out, if Judge Nelson disposed of the other 40 bonds. I don't think that question came up." Do you remember whether that was your answer or not?

A. I think it was.

Defendants gave evidence by George D. Kellock and Samuel Dennis, tending to show that the market value of the bonds in question in New York, in 1860, was from 17½ to 19½ cents, and proved auction sales at those prices, made by order of the auditor of the State of Minnesota.

149 GEORGE L. NICHOLS, being sworn on behalf of defendant, testifies:

I was a member of the firm of T. B. Coddington & Co. in the spring of 1859. I was at that time, and had been previously, acquainted with Mr. Newton. I took some part in the negotiation of this contract. I remember the day that the papers were passed and the bonds delivered, the 21st of April. I went to Europe that month, on the 27th of April, I took 44 of the 45 bonds with me to Europe; the other one had been sent forward the mail before. Mr. Henry Nash was in England at that time. He was the resident partner in Liverpool. This one bond had

been sent out by mail to Mr. Nash. I brought the bonds back; at least that is my recollection. I was present when Mr. Newton delivered the bonds.

Was there anything said about the delivery being subject to any condition?

(Objected to by plff.'s counsel, and objection sustained. Deft. read in evidence from book of minutes the proceedings of July 13, 1858, annexed as ex.)

Plaintiff's counsel read in evidence the sixth (6th) and seventeenth (17th) sections of the by-laws, and also the seventh (7th) section
150 of the charter of the company, as follows:

BY-LAWS.

Section 6. The regular quarterly meetings of the board of directors shall be held on the first Wednesday in February, May, August, and November, at the office of the company in St. Paul, at 2 o'clock in the afternoon, unless otherwise specially directed by the board, and special meetings may be called by the president, or by any three members of the board, to be convened at such time and place as may be appointed, but at such special meeting it shall require a majority of the whole board to adopt any measure.

Section 17. A committee of 5 directors shall be appointed annually by the board of directors at the first meeting after the annual election of directors, to be called the executive committee. The executive committee shall hold their office during the term for which they were elected directors, or until removed by the board of directors. The executive committee shall possess all the power and authority when the board of directors is not in session that the board of directors do or can possess when in session by virtue of the act of incorpora-
151 tion, or any other act affecting the powers and authority of the corporation, or its directors, or of these by-laws. They shall keep a record of all their transactions, which shall be read at each quarterly meeting of the board of directors, and the board of directors, at such quarterly meeting, shall have the same power to disapprove, rescind, and annul any act or transaction of the executive committee, subsequent to the next previous quarterly meeting of the board, as they would have to disapprove, rescind, or annul any previous act or transaction of the board of directors, and all the acts and transactions of the executive committee not disapproved, rescinded, or annulled, shall be deemed, held, and taken to be approved and confirmed by the board of directors.

Section 7th of the charter of the company. The said company shall have power to make, ordain, and establish all such by-laws, rules, and regulations as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well-ordering, regulating, and securing the affairs, business, and interests of the company; provided that the same be not repugnant to the Constitution and laws of the United States or the laws of this Territory; and the board of directors shall have power to establish
152 such rates of toll and charges for the conveyance of persons and property upon its said railroads as they shall from time to time direct and determine, and to change the same, and to levy and collect the same for the use of said company. The width of track shall be four feet eight and half inches, and the iron used in the track shall be of approved quality and pattern, and the railroad shall be completed, furnished, and equipped in a style and of a quality equal to the average of

other first-class western roads. The construction of wheels, the form and size of cars, the weights of loads, the rate of speed, terms of running, connections with other railroads, and all other matters and things respecting the use of said railroads shall be in conformity to such rules and regulations as said board of directors shall from time to time determine and establish; provided that at all crossings of the track of said railroad or branch with the track of any other railroad, the engine or cars arriving at such crossing shall come to a dead halt or stop, before crossing the same. The said company shall have the right and authority to construct their said railroad and branches upon and along,
153 cross under or over any public or private highway, road, street, plank-road, or railroad if the same shall be necessary, but the said company shall put such highway, road, street, plank-road, or railroad in such condition and state of repair as not to impair or interfere with its free and proper use; and the said company shall have the right and authority to erect and maintain all the necessary bridges for the use of their said railroad over any stream of water or water-course at such points of crossing the same as they may locate the said road or branches with all necessary abutments, piers, or other foundations; and said company shall have power to connect the said railroad or branches with any other railroad or branch thereof in this Territory or State, or in the State of Wisconsin, and to operate the same in connection with such other railroad or branch under such name and on such terms as may be agreed upon by and between said companys, or to purchase from any other railroad company the whole or any part of any railroad or branch railroad owned by such company.

154 Plaintiff's counsel also read in evidence the copy of the bond which had been produced as a sample, as follows:

BOND.

Seven per cent.] [Seven per cent.

1,000.] [1,000.

Minnesota State—State of Minnesota railroad bond.

No. 1536.] [No. 1536.

The State of Minnesota acknowledges to owe, and promises to pay to the order of the Minnesota and Pacific Railroad Company, at the Metropolitan Bank in the city of New York, or at such other place in said city as may be hereafter designated by law, the sum of one thousand dollars, on the first day of December, A. D. one thousand eight hundred and eighty-three, with interest at the rate of seven per cent. per annum, to be paid semi-annually at the place or places aforesaid, on the 1st day of June and December of each year, on the presentation and surrender of the proper coupon hereto attached.

This bond is issued under the authority of an amendment to the constitution of the State of Minnesota, adopted by the people on the 15th day of April, 1858, and proclaimed by the governor of the State on the 5th day of May, 1858.

155 Witness the great seal of the State of Minnesota, and the signature of the governor and treasurer of said State, at St. Paul,

Minnesota, this 3rd day of February, A. D. 1859, and of the State the first.

W. HOLCOMBE,
Governor ad interim.

Countersigned and registered.
THE GREAT SEAL OF THE STATE OF MINNESOTA.

GEO. W. ARMSTROUD,
Treasurer.

Defendant's counsel read in evidence the 5th section of the charter of the company as follows:

Section 5. All of the affairs of said corporation shall be managed by a board of 15 directors, who shall be stockholders, and a majority of whom shall be citizens of the Territory, and who are hereby invested with all the powers of said corporation; they shall be chosen annually, by ballot, by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws, and at such place as shall be prescribed by the board of directors, and stated in such notice. The votes shall be
156 delivered in person or by proxy, duly authorized, and in all cases in which stockholders shall vote, each share of stock shall be entitled to one vote, and in all elections for directors, those stockholders, equal to the number to be elected, having the greatest number of votes, shall be deemed and declared duly elected. The elections shall be conducted in such manner as shall be prescribed by the by-laws of the company; and if from any cause an election of directors shall not be had at the time when, by the provisions of this act or by the by-laws of said corporation, it should be had, the same may be held at any other time on notice to be given as aforesaid; and until such election be had the directors of the preceeding year shall continue to act, and the corporation hereby created shall not forfeit nor lose any of its privileges, franchises, or immunities, by reason of the irregularity or want of such election.

Plaintiff's counsel also read in evidence the proceedings of the board of directors on May 14th, 1859, as follows:

ST. PAUL, *May* 14, 1859.

157 The board assembled pursuant to adjournment.

Present, Messrs. Rice, Ramsey, Newton, Nelson, Hatch, Prince, Lynde, Woodbury—8.

The proceedings of the executive committee from Dec. 4, 1858, to May 13, 1859, inclusive, were read by the secretary. The following resolution was unanimously adopted:

Resolved, That the proceedings of the executive committee from Dec. 4, 1858, to May 13, 1859, inclusive, are hereby ratified and approved, except the resolution of March 18, 1859, accepting a proposition from Mr. S. H. Clifford, which is hereby disapproved, and that the subject-matter thereof be referred to the executive committee for adjustment.

The following resolution was unanimously adopted:

Resolved, That whereas, on the 27th day of July, in the year one thousand eight hundred and fifty-eight, Edmund Rice executed an agreement to the Minnesota and Pacific Railroad Company, whereby he bound himself to convey to said company the southwest quarter of the southeast quarter of section 30, tow. 29 N., of range 22 west, containing 40

acres, on condition that he should be paid $35,000 in first-mort-
158 gage bonds within 4 months from the date thereof, and on condition that said agreement should be accepted by said company within 30 days from the date thereof;

And whereas such acceptance was never made, nor, in fact, was said agreement ever delivered to said company, but the same, by accident, was, among other agreements, placed for record, and recorded in the office of the register of deeds of Ramsey County:

Now, therefore, be it resolved, That said agreement be, and the same is hereby, declared to be annulled, and that the same be returned to said Rice, and that the president and secretary execute and acknowledge a proper release or discharge of said agreement, to the end that such release may be recorded in the office of said register of deeds.

A communication was received from Mr. J. W. Lynde, tendering his resignation as director. The resignation was unanimously accepted.

Upon a ballot to fill the vacancy, Wm. B. Shute, jr., received nine votes, and was declared elected.

A similar communication was received from Mr. E. A. C. Hatch, tendering his resignation; which was accepted.

Upon a ballot to fill a vacancy thus occasioned, D. C. Shep-
159 pard received eight votes, and was declared elected.

Mr. W. H. Newton also tendered his resignation as director; which was accepted, and upon a ballot to fill the vacancy Mr. E. C. Caldwell received nine votes and was declared elected.

A communication from James W. Taylor was read, tendering his resignation as secretary of the company; which was accepted. Upon ballot being had to fill the vacancy, Mr. J. M. Metcalf was declared elected.

A communication was received from Benj'n Thompson, tendering his resignation as a member of the executive committee; which was accepted.

On motion of Mr. Prince, it was—

Resolved, That Messrs. Shute, Sheppard, and Caldwell be elected to fill the vacancies occasioned by the resignations of Messrs. Thompson, Newton, and Hatch, as members of the executive committee.

On motion of Mr. Prince, it was—

Resolved, That the bill of T. M. Newton be allowed and warrant issued for the amount, $299.81.

On motion of Mr. Ramsay, it was unanimously—

Resolved, That the thanks of this board be tendered to James W. Taylor, late secretary, for the able and efficient manner in which
160 he has discharged the duties of this office, and that the secretary be requested to furnish Mr. Taylor with a copy of this resolution.

The board then adjourned.

R. R. NELSON,
Acting President.

T. M. METCALF, *Sec'ry.*

The testimony here closed.

Plaintiff's counsel made the following requests for directions to the jury:

First. That Rice had no authority as president of the Minnesota and Pacific Railroad Company, nor under the resolution adopted by its

board of directors on the 13th of July, 1858, to make the contracts with T. B. Coddington and Co. dated the 21st April, 1859.

(The court refused so to charge, to which refusal the plaintiff's counsel then and there duly excepted.)

Second. That if the said Rice had authority by force of said resolution, the said bonds, and his power to pledge the same under said contract, were withdrawn by force of the resolutions of the executive committee, passed January 23, 1859, and February 3rd, 1859.

161 (The court refused so to charge, to which refusal the plaintiff's counsel then and there duly excepted.)

Third. That even if said Rice had such authority, if he had, at the time of delivering said contract to Newton, directed him to deliver the same, and the letter of that date, and said bonds, to Coddington upon condition that such contract should, before becoming operative, be approved by the board of directors of said company, and upon the further condition that the said 40 bonds then supposed to be in the hands of Judge Nelson should not have been disposed of by him, or upon either of said conditions, then, unless said conditions were complied with, the said contract was never binding upon it and did not entitle the said Coddington & Co. to retain said bonds unless said contract has been ratified and adopted by the board of directors of said company.

Fourth. There has been no ratification of said contract by the said railroad company.

(The court refused so to charge, to which refusal the plaintiff's counsel then & there duly excepted.)

162 Fifth. The resolution of May 13, 1859, was not a ratification of said contract.

(The court refused so to charge, to which refusal the plaintiff's counsel then & there duly excepted.)

Sixth. To constitute ratification there must have been a direct sanction of the contract by the board of directors, or conducts, or acts, or a resolution, or resolutions inconsistent with any other supposition than an assent to such contract by said board.

Seventh. The plaintiff, on the facts proved, is entitled to recover the actual value of said bonds, with interest on such value, from the time the delivery of said bonds was demanded on his behalf.

(The court refused so to charge, to which refusal the plaintiff's counsel then and there duly excepted.)

Eighth. In estimating such damages the jury may consider the nature of these bonds in connection with all the evidence in the case, and should give the highest value thereof at any time between the date of the conversation thereof by the defendants and the time of trial.

The court then charged the jury as follows:

163 Gentlemen of the jury: Mr. Rice had full power and authority under the resolution of July 13, 1858, to make the contract of April 21, 1859. (To which ruling plaintiff duly excepted.) The court rules that, as a matter of law, it is not necessary to state the reasons why, in judgment of law, the resolutions of July 13, 1858, were sufficient to authorize Mr. Rice to make the contract. Then there was nothing in the resolution of the executive committee of January 23rd and February 3rd, 1859, to derogate, detract from, or in any manner impair the force and efficiency of the resolution of July 13, 1858, as conferring such authority upon Mr. Rice. (To which ruling the plaintiff duly excepted.) The only question in respect to the contract is, was it in fact made? An essential element in the making of a contract is the delivery

of it between the parties absolutely, to take effect presently, without any conditions whatever. If it is delivered subject to conditions, then it does not take effect unless those conditions are complied with. And if the contract did not there take effect between the parties, then if Mr. Hatch has a title to these bonds, derived through Mr. Chamberlain from the company—if he has a good title to them
164 as against the company, then if Mr. Coddington has no right to retain them as against the company, he has no right to retain them as against Mr. Hatch, but must respond to Mr. Hatch in this suit, providing he has converted them; and he must respond for the damages which the law holds to be the proper damages in such a case.

Now, the principal question of fact for you to consider in this case is this question of whether this delivery was absolute or conditional, irrespective entirely of the consideration whether the condition imposed was communicated to Mr. Coddington. That makes no difference, as Mr. Coddington did not receive the papers directly from the hands of Mr. Rice, who was the authorized agent of the company to execute the papers, but received a portion of them through the hands, perhaps, of Mr. Douglass, and another portion, the bonds and letter, through the hands of Mr. Newton. Any condition which accompanied the delivery of any of the papers into the hands of the individual who acted as intermediary between Mr. Rice and Mr. Coddington followed the papers into the hands of Mr. Coddington, whether said condition was communicated to Mr. Coddington or not.

165 It is alleged as a matter of fact on part of the plaintiff, and the burden of proof in that respect is with the plaintiff, to show by the preponderence of evidence to the satisfaction of the jury that such a condition was imposed; otherwise no such condition exists in the case.

Two conditions are alleged on the part of the plaintiff to have accompanied the instrument when it left the hands of Mr. Rice on its way to Mr. Coddington. One condition alleged was that the instrument should not be binding, and the contract and delivery of the bonds to Mr. Coddington should not be binding and operative, unless the board of directors of the company at St. Paul, after being advised thereof, should approve, ratify, and confirm it; another condition alleged to have existed was that if certain 40 bonds of the company, making up, with the 45,85 bonds out of the 100, should have been disposed of at St. Paul by the proper officer of the company there who had them in charge, the contract should not be binding.

It is alleged that one or both of these conditions were imposed, and if you find, as a matter of fact, that either one or other of them was imposed, then, unless the condition was fulfilled, unless in the one
166 case the company did ratify the contract, and unless in the other case the bond' were not disposed of at St. Paul, then, if the conditions were imposed and were not fulfilled, the contract did not become an operative and binding contract, and Mr. Coddington had no right to the possession of the bonds as against the company.

Now, gentlemen, in order to understand the questions in this case which come up for your consideration, I shall speak of a few facts simply in the way of chronology, and which are of importance, it seems to me, in the case. The transaction, whatever it was, took place on the 21st April, 1859. The papers, the contract, the letters of credit, the three notes, and the letter of Mr. Rice to Mr. Coddington, all bear that date. Mr. Rice and Mr. Newton started back for St. Paul on the 22d of April. The first meeting of the board, at which they were present, as

appears by the record, was on the 29th of April. Mr. Nelson in his testimony states that he disposed of the 40 bonds to Mr. Chamberlain, between the 15th and 28th. You will remember the testimony as to what took place at St Paul in regard to these 40 bonds prior to the time that Mr. Newton and Mr. Rice arrived there, and Mr. Nelson's testimony in regard to the arrangement between him and Mr. Chamberlain,
167 whereby he had parted with control to Mr. Chamberlain of the 40 bonds under the circumstances stated, in respect to the advance of $16,000 on the note of the company, and the taking of the 40 bonds by Mr. Chamberlain to apply, dollar for dollar at par, on his contract to build that road. That was the state of things when Mr. Rice and Mr. Newton arrived at St. Paul. We then have a meeting of the board, on the 29th of April, in which it would appear that Mr. Rice and Mr. Nelson and Mr. Newton were present, but there was no quorum and they adjourned till the next day. The next day there was a meeting in which Mr. Rice, Mr. Nelson, Mr. Newton, and Mr. Hatch were present, with four others, constituting a quorum, and there was an adjournment until the 6th of May. At that day, April 30th, at which we have now arrived, comes in the letter of Mr. Rice to Messrs. Coddington & Co., in which Mr. Rice informs Mr. Coddington that he had found upon his arrival that the acting president had disposed of the 40 bonds, and that it would be impossible, therefore, for the company to comply with the contract. That appears to be the only communication which passed
167½ from St. Paul to Mr. Coddington prior to the proceedings which took place on the 13th May at St. Paul. Meetings of the board took place on the 6th, 9th, & 10th May, at which Messrs. Hatch, Rice, Nelson, and Newton were present, and again on the 11th, 12th, and 13th, those gentlemen being present in every case. At the meeting on the 13th the basis of arrangement with Mr. Chamberlain was effected by the board, the paper in reference to which has been read. You will recollect that it effected a new arrangement with Mr. Chamberlain for the construction and ironing of the road, whereby he was to be entitled to all the State bonds that came to the company as fast as they should be received from the State. Then, immediately following this arrangement of Mr. Chamberlain, comes the resolution which has been so much commented upon, that Mr. Newton be authorized to proceed to New York to procure the surrender of the contract and the return of the 45 bonds. This record shows nothing as to the assignment and transfer of the 45 bonds to Mr. Chamberlain; but you will recollect the question I put to Mr. Rice, to which he replied that the execution by putting on the seal and his own signature and the signature of Mr. Taylor, the secretary, to the transfer of the 45 bonds to Mr. Chamberlain, preceded the adoption of the resolution in respect to the authorizing Mr. New-
168 ton to proceed to New York and procure the surrender of the contract and the bonds. It appears by the record here that the arrangement with Mr. Chamberlain preceded this resolution. Whether the assignment of the 45 bonds to Mr. Chamberlain preceded the adoption of the basis of the arrangement with Mr. Chamberlain, does not appear; but it is positively testified to by Mr. Rice that the transfer of the 45 bonds preceded the adoption of the resolution, stating that whereas circumstances have arisen whereby it has become impossible to comply with the contract, therefore Mr. Newton be authorized to proceed to New York, &c.

Now, gentlemen, just here is the most fitting place to speak of that transfer to Chamberlain. It was a transfer to Chamberlain purporting to be of the title to the 45 bonds as against the company; and if it passed

anything to Mr. Chamberlain, it passed to him the title to the 45 bonds as against the company. Of course it passed that title, subject to any title and right of possession which in fact Mr. Coddington had at the time, if he had any, under the contract of April 21, 1859. If Mr. Coddington had no right as against the company, at the time when this instrument was executed to Mr. Chamberlain, to hold these bonds as against the
169 company, of course he had no right to hold them against Mr. Chamberlain when the title passed to Chamberlain; so that Chamberlain had a right to dispose of them as he saw fit.

Now, upon that subject the integrity of the transaction between the company and Mr. Chamberlain in the transfer of these bonds has been attacked. It is for you to say whether, upon the evidence, you believe that the transfer, on all the facts and circumstances and chronology of the case—Mr. Rice's testimony as to his previous arrangement with Mr. Chamberlain; as to his interviews with him in New York, about their agreeing on a certain sum due, the money to be raised somewhere; and the final conversation in Milwaukee, and there the transaction in St. Paul, in connection with the fact that this new arrangement was made, and that the transfer of the 45 bonds took place before any resolution of the board was passed—on all these facts and circumstances, taken into consideration in connection with Mr. Rice's testimony as to the actual consideration of the transfer of the 45 bonds to Mr. Chamberlain, it is for you to say whether you believe that that was a bona-fide real transaction or a sham. (To which ruling and instruction the plaintiff
170 duly excepted.) Because, if it was a sham, why then the plaintiff could derive no title from such a transaction by taking the bonds from Mr. Chamberlain; but if Mr. Chamberlain got a good title, it is of no consequence whether there was any consideration between him and Mr. Hatch for the bonds.

The transfer from the company states upon its face a transfer of the 45 bonds, and that it was executed; that the company caused these presents to be signed by their officers, and the corporate seal to be affixed; and that is prima-facie evidence of the authority until it is attacked and overthrown by the defendant. Then the next thing in order under these proceedings of May 13 is an order written by Judge Nelson to Mr. Coddington, bearing date May 14, to deliver these bonds to Mr. Rice or Mr. Newton. That order was written and given to Mr. Newton, not sent down by mail, and he brought it down with him when he came to perform the duty confided to him by the resolution of May 13th.

Then the next in order is Mr. Rice's letter to Mr. Coddington, dated May 17, enclosing a copy of the resolutions of May 13th, and telling him, in substance, that Mr. Newton was coming down early the following week.

171 I shall not read these letters to you. You probably recollect sufficiently their character, as they were commented upon very fully by the respective counsel.

Then, a week after the 17th of May, on the 24th of May, Mr. Newton not yet having left St. Paul, Mr. Rice writes a letter to Newton, Mr. Newton being about leaving to go to New York, giving him instructions, and handing him an attested copy of the resolution which he states authorized him to proceed to New York, and to receive from Mr. Coddington the surrender of the contract and the 45 bonds, and also giving Mr. Newton the letter of credit and the duplicate contract. Then Mr. Newton comes to New York, and the first paper we have after he gets here is his letter of the 17th of June to Mr. Coddington, in

which he tells Mr. Coddington his authority, and asks Mr. Coddington to make a proposition. (A portion of that letter was not admitted in evidence.)

Then Mr. Coddington replies on the 15th June to Mr. Newton, making a statement of his view of the case. The substance of his answer is such as to leave a question as to the amount of damages, and this he considers the difference between the contract price and the market value of the iron, with a certain allowance, and leaving the ques-
172 tion of damages to be determined by arbitrators, &c., &c.

Then the next thing is a letter from Mr. Coddington to Mr. Rice, dated June 28th, in which Mr. Coddington gives notice that in pursuance of the terms of the contract, he elects to furnish 3,000 tons of iron, and speaks of the opportunity offered to Mr. Rice to withdraw the letter announcing the inability of the company to fulfill the contract, and giving him the opportunity to make up the amount of deposit required. Then follows some other letters; two from Mr. Rice to Coddington, dated, respectively, July 5 & July 27, and *from* one from Rice to Newton dated July 30th. The negotiation then fell through, and Mr. Newton disappeared from the scene, and nothing took place until fall, in September or October, when Mr. Rice came down here and had this interview with Mr. Coddington which culminated in the bringing of a suit against the company by Mr. Coddington upon the contract for damages.

Before that suit was terminated, and while it was pending, Mr. Hatch, on the 30th of October, 1860, presented his title-papers to these 45 bonds to Mr. Coddington, and demanded delivery of the bonds.

Now, upon the question whether either of the conditions I speak
173 of was impressed upon this contract so as to make the delivery conditional and dependant upon the fulfillment of the condition, you are to take into consideration not only the direct testimony of the witnesses on the subject, Mr. Rice and Mr. Newton, but their doings as members of the board. This record states that they were present on the 13th of May, and that this resolution of that date was unanimously adopted. You ought to take into consideration all they said and did—all their actions; and you have a right also to consider in what they did write, if you regard it as of weight, the fact that they not only wrote what they did, but that they failed to write other things.

If you shall be of the opinion that they ought to have written, and that the fact of their not writing is inconsistent with any of their testimony as to what they did or said here in New York at the time of the delivery of the papers to the person who took them to Mr. Coddington, you have a right to consider all this correspondence of these gentlemen upon the question, it having a proper bearing as evidence upon the fact as to whether the condition was improved. (To each and every part of which ruling in this paragraph the plaintiff excepted.)

174 Now, if the condition was imposed in point of fact, it could be got rid of and waived by the company by the actual ratification and approval of the contract, which, though not necessary to make the contract valid and operative, because there was sufficient original authority for it, yet a ratification by the company of it, in fact, would be sufficient to dispense with the imposed conditions; because, as the conditions were imposed by Mr. Rice solely on behalf of the company, the company could waive those conditions by a ratification and adoption of the contract; therefore, all these proceedings that took place in the board at St. Paul, & all the transactions, are to be taken into consideration by you, not merely upon the question as to whether you shall be-

lieve that in point of fact a condition was imposed, but also on the question, in case you find a condition was imposed, whether the company had waived that condition, and made it null by ratifying and adopting the contract as an absolute positive contract. It is for you to say, as a matter of fact, how that is upon all this evidence; because if you shall find in point of fact that by these transactions the
175 company did ratify and adopt this contract, that was a destruction of any condition that may have been imposed.

The court then instructed the jury as to the rule of damages, and proceeded as to the requests of the plaintiff:

I charge, as requested, that if Mr. Rice at the time of delivery said contract to Newton directed him to deliver the same, and the letter of that date, and said bonds to Coddington upon condition that such contract should before becoming operative be approved by the board of directors of said company, and upon the further condition that the said 40 bonds, then supposed to be in the hands of Judge Nelson, should not have been disposed of by him, or upon either of said conditions, then, unless said conditions were complied with, the said contract was not binding upon it, and did not entitle the said Coddington & Co. to retain said bonds, unless said contract has been ratified and adopted by the board of directors of said company. That accords precisely with what I have heretofore stated.

This I also charge you as correct: To constitute a ratification
176 there must have been a direct sanction of the contract by the board of directors, or conduct, or acts, or a resolution or resolutions inconsistent with any other supposition than an assent to such contract by said board.

The court then commented upon the requests of the defendant's counsel, reiterating the views expressed in the charge.

The court stated to plaintiff's counsel that all of his propositions not embraced in the charge were refused; and plaintiff's counsel then and there duly excepted severally to the court's refusing to charge the first, second, fourth, fifth, and seventh propositions as requested, and duly excepted to the refusal of the court to charge each and every of the requests so made.

The jury returned into court with a verdict for the defendant.

And because none of the said exceptions so offered and made to the opinion and decision and instructions of the said judge do appear upon record of the said trial, therefore, on the prayer of the said plaintiff, by his counsel, the said judge hath to this bill of exceptions put his
177 seal, this twentieth day of December, one thousand eight hundred and seventy.

SAML. BLATCHFORD.

(Endorsed:) U. S. circuit court. Edwin A. C. Hatch, plaintiff, against Thomas B. Coddington, impleaded, &c. Filed Jan'y 23d, 1874.

178 Supreme Court of the United States.

EDWIN A. C. HATCH
agst.
THOMAS B. CODDINGTON, IMPLEADED, &C. } In error.

Of October term, in the year of our Lord one thousand eight hundred and seventy.

Afterwards, to wit, on the second Monday of October, of this term,

before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Edwin A. C. Hatch, by B. F. Rice, his attorney, and says that in the record and proceedings aforesaid there is a manifest error in this, to wit: That by the record aforesaid it appears that the said judgment aforesaid given was given for the said defendant against the said plaintiff, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant; and the said plaintiff prays the judgment aforesaid may be reversed, annulled, and altogether
179 held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

B. F. RICE,
Attorney for Plaintiff in Error.

(Endorsed:) Supreme Court of the United States. Edwin A. C. Hatch v. Thomas B. Coddington, impleaded, &c. Assignment of error. B. F. Rice, atty. for plff. in error. Filed Mch. 6, 1874.

180 Supreme Court of the United States.

EDWIN A. C. HATCH
vs.
THOMAS B. CODDINGTON, IMPLEADED, &C.

Know all men by these presents that we, the said E. A. C. Hatch, of the city of Saint Paul, in the State of Minnesota, who executes this instrument by B. F. Rice, his attorney, and Elbridge G. Roberts & Bushrod F. Rice, of the city, county, and State of New York, are held and firmly bound unto said Thomas B. Coddington in the sum of two hundred and fifty ($250) dollars, to be paid to said Thomas B. Coddington, his executors & administrators; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this ninth day of January, A. D. 1874.

Whereas the above-bounden Edwin A. C. Hatch hath prosecuted a writ of error to the Supreme Court of the United States to reverse
181 the judgment rendered in the above-entitled suit by the circuit court of the United States in the southern district of New York:

Now, therefore, the consideration of the above obligation is such, that if the above-named Edwin A. C. Hatch shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void, and otherwise the same shall remain and be in full force and virtue.

EDWIN A. C. HATCH, [L. S.]
By B. F. RICE, *his Attorney.*
ELBRIDGE G. ROBERTS. [L. S.]
BUSHROD F. RICE. [L. S.]

Sealed and executed in the presence of—

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Elbridge G. Roberts, being duly sworn, says that he is one of the subscribers to the foregoing instrument, and that he is a householder and a resident of the city of Brooklyn, county of Kings, and is worth

the sum of five hundred dollars over all his debts and liabilities, exclusive of property exempt by law from execution.

E. G. ROBERTS.

Sworn to before me June 9th, 1873.
[E. J. C., L. S.] EDWARD J. CRAMER, *Notary Public*,
Notary Public. *N. Y. C.*

182 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Bushrod F. Rice, being duly sworn, says that he is one of the subscribers to the foregoing instrument; that he is a householder and resident of the city of New York, and is worth the sum of five hundred dollars over all his debts and liabilities, exclusive of property exempt by law from execution.

BUSHROD F. RICE.

Sworn to before me Jan'y 13, 1874.
[L. S.] CHAS. J. BRECK, *Notary Public*,
Notary Public. *N. Y. C.*

CITY AND COUNTY OF NEW YORK, *ss:*

On this ninth day of January, 1874, before me personally came Elbridge G. Roberts, to me known to be one of the individuals described in and who executed the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein mentioned.

[L. S.] EDWARD J. CRAMER,
Notary Public, N. Y. C., Co. (171.)

CITY AND COUNTY OF NEW YORK, *ss:*

On this January 13, 1874, before me personally came Bushrod F. Rice, to me known to be one of the individuals described in and who
183 executed the foregoing instrument, and acknowledge to me that he executed the same for the purposes therein mentioned.

[L. S.] CHAS. J. BRECK,
Notary Public, N. Y. C.

(Endorsed:) Supreme Court of the U. S. Edwin A. C. Hatch against Thomas B. Coddington, impleaded, &c. Bond on writ of error. B. F. Rice, atty. for plff. in error, 251 Broadway, N. Y. City.

The within bond approved.
January 15th, 1874.

SAM'L BLATCHFORD.

Filed, Feb'y 4, 1874.

184 UNITED STATES OF AMERICA, *ss:*

To Thomas B. Coddington, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Edwin A. C. Hatch is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York, this 4th day of February, in the year of our Lord one thousand eight hundred and seventy-four.

SAM'L BLATCHFORD.

185 (Endorsed:) Supreme Court of the U. S. Edwin A. C. Hatch *v.* Thomas B. Coddington, impleaded, &c. Citation. B. F. Rice, atty. for plff. in error.

Due service of a copy of within citation is hereby admitted.
New York, Mch. 5, 1873.

OWEN, NASH & GRAY,
Deft.'s Attys.

Filed March 5, 1874.

(Indorsement on cover:) No. 276. Edwin A. C. Hatch, plaintiff in error, *vs.* Thomas B. Coddington. S. New York, C. C. U. S. Filed 29th September, 1874.

Trousers for Bunch 4.5
boys

Supreme Court of the United States.

EDWIN A. C. HATCH,

Plaintiff in Error,

versus

THOMAS B. CODDINGTON.

STATEMENT OF CASE AND BRIEF

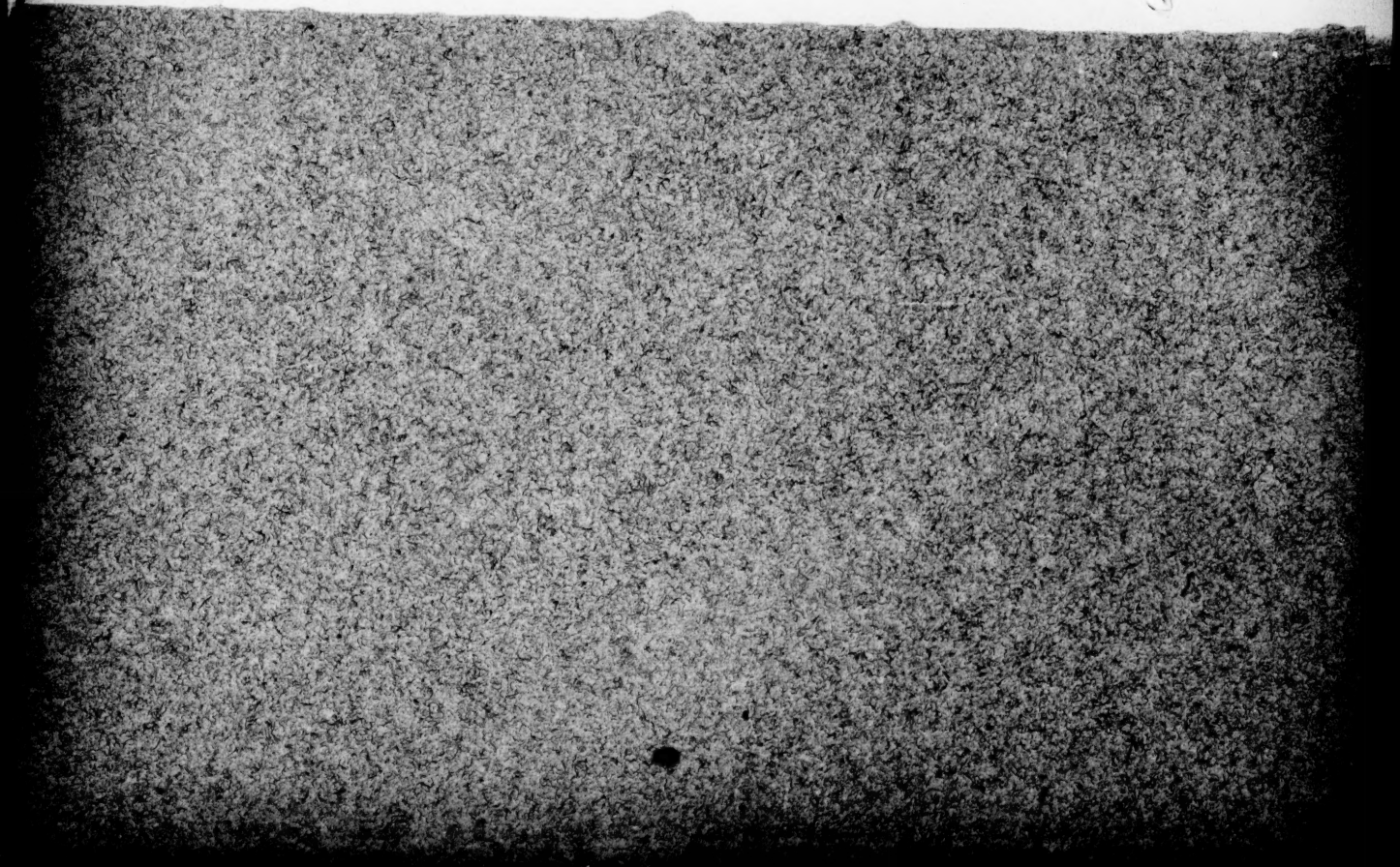
FOR PLAINTIFF IN ERROR.

E. W. STOUGHTON,

Of Counsel.

NEW YORK:
BENJ. H. TYRREL, LAW, BOOK AND JOB PRINTER, 74 MAIDEN LANE.

1877.



BENJ. H. TYRREL, LAW PRINTER, 74 MAIDEN LANE.

Supreme Court of the United States.

EDWIN A. C. HATCH,

Plaintiff in Error,

vs.

THOMAS B. CODDINGTON.

Statement of the Case.

This was an action of trover brought by the plaintiff in the Circuit Court of the United States for the Southern District of New York, to recover of the defendant the value of forty-five Minnesota State Railroad bonds, for the sum of one thousand dollars each, issued by that State in aid of the construction within it of a railroad by the Minnesota and Pacific Railroad Company; and by the State delivered to that company in February, 1859, which bonds the defendant converted to his own use in April of that year. The plea was the general issue. The cause was tried before Judge Blatchford and a jury, in December, 1870, with a verdict for the defendant.

These bonds were issued under a provision of the constitution of that State, printed on page 26–7 and 8 of the record, and were part of $100,000 of said bonds delivered to said company in February aforesaid (page 9); They were issued and delivered upon various conditions—one of which was that the interest thereupon should be provided for and punctually paid by the company. (See Record, page 27.)

The interest on these bonds would fall due on the first of June, 1859 (p. 42), and that on certain first mortgage bonds issued by the company on the first of April preceding.

It was deemed important to provide for payment of interest on the latter by borrowing $16,000 upon a pledge of forty-five of the said State bonds, and the acting president, the Hon. Rensselear R. Nelson, was authorized by resolutions of the executive committee to do this (Record, pages 18 and 19), and he, on the 13th of March, 1859, delivered the forty-five bonds in question for that purpose to Wm. H. Newton, a director (Record, pp. 9, 10).

The executive committee had power under its by-laws to make this disposition of the bonds (Record, p. 50), and its proceedings for that purpose were expressly ratified by the board of directors at their quarterly meeting of May, 1859 (Record, p. 60).

Mr. Newton was unable to procure a loan on these bonds, and finally, and about eight days before the 21st of April, 1859, he deposited them in a sealed package for safe keeping in the safe of the defendant (Record, testimony of defendant, pages 11–16; testimony of Newton, pages 45, 46; Exhibit D, pages 9 and 10).

Thereupon, negotiations ensued between Rice, the president of the company, and the defendant, which led to the execution and conditional delivery, as Rice testified, of the agreement printed in the Record, pp. 12 and 13—one of its purposes

being to obtain the $16,000 to meet the interest aforesaid (Record, pp. 14 and 15).

This agreement was, as Rice testifies, delivered to Newton, to be delivered to the defendant, only upon condition that the company should ratify it, and upon the further condition that said company possessed, and could deliver the other forty bonds mentioned in the contract (p. 22).

Newton, however, who owns the defendant's claim (p. 57) denies any recollection of any such conditional delivery (Record, p. 49), and this was a question of fact submitted to the jury.

Rice swears that he was never authorized by the Board of Directors to execute such a contract (Record, p. 23), and this is not sought to be controverted by any parol proof.

As soon as he reached St. Paul's, Minnesota, he learned that the company had parted with the forty bonds, thus rendering it impossible for it to perform the said contract, and he so informed the defendant by letter, dated April 30, 1859, and which he admits he received on the 6th of May (Record, p. 15).

The defendant paid nothing under the letter of credit, (Record, p. 15,) and admits he bought no iron in view of the contract (Record, pp. 15 and 17,) and supposes they may have had 700 tons on the 1st of July, and testifies (Record, p. 18,) that knowing from this letter that the company could not fulfill the contract, he did not have the iron come forward rapidly.

The defendant, however, resolved to hold and sell the bonds upon the unfounded pretence that he had sustained damage by the failure of the company to perform the contract, and for that purpose wrote the letter of June 28th, printed at pages 30 and 31 of the Record.

It decisively appears however, upon his own testimony, that he never performed an act, paid a

farthing, or sustained the least damage in consequence of said contract, but he nevertheless proceeded to sell said bonds, and to repurchase a part of them, so that at the time of suit brought he had possession of twenty-five of them, the other twenty having been by him disposed of after the demand and refusal to deliver.

Before the company was informed of the contract thus signed by Rice, Judge Nelson, the Vice-president had, as he was authorized, delivered the forty State Bonds to Chamberlin the contractor, who had performed all the work done on the road, who also, on the faith of said bonds and of the agreement with the company of may 13th, (Record, p. 52,) furnished the $16,000 needed to pay the interest. (Record, pages 39, 41, 42, 43.)

May 13th, 1859, by resolution of the Board of Directors it was declared impossible to comply with the terms of the contract, and Newton was authorized to proceed to New York and procure their surrender (Record p. 17), and he carried with him an order upon the defendent to deliver the same (Record p. 19).

This effort to procure the bonds resulted in an effort by the defendant to convert the contract into one for three thousand instead of one for one thousand tons that his claim for damages might be so worked up as to equal the value of the forty-five bonds (Record p. 30), although, as before stated, nothing had been by the defendant paid or done towards performing the contract.

If the contract bound the company, and the bonds were rightfully held and disposed of by the defendant under it, they could not be recovered in trover; but if Rice had not authority to pledge them, or if under the contract they could only be disposed of for the purchase of iron, or to repay an advance of $16,000 they were subject to the demand of the company or its assignee Hatch, on refusal to comply with which trover could be maintained.

The questions presented by the record are:

First.—Had Rice authority to make the said contract?

Second.—If not, did the Company ratify the same? and,

Third.—If the Company was bound thereby, did either of the contingencies arise which authorized the defendant hold or sell the said bonds after demand thereto, by the Company or its assignees?

ERRORS RELIED UPON BY PLAINTIFF.

1*st.*—The judge erred in charging that Rice had power and authority under the resolution of July 13th, 1858, to make the contract in question.

2*nd.*—The judge erred in refusing to charge that if that resolution conferred such authority it was withdrawn by the resolutions of January 23rd, and February 3rd, 1859.

3*rd.*—The judge erred in refusing to charge that there had been no ratification of the said contract.

4*th.*—The judge erred in refusing to charge that the resolutions of May 13th, 1859, was not a ratification of said contract.

5*th.*—The judge erred in excluding proof of what the members of the Board of Directors said at the meeting of May 13th, 1859, as to ratification or refusal to ratify said contract.

6*th.*—The judge erred in submitting to the jury the question whether the transfer of the bonds to Chamberlin was a sham or a real transaction

7*th.*—The judge erred in refusing to direct a verdict for the the plaintiff, for the value of said bonds.

Brief of the Argument.

I. The Court instructed the jury that Rice had full power and authority under the resolution of July 13th, 1858, to make the contract in question, and to this instruction the plaintiff excepted.

That resolution was adopted long before the company possessed, or were entitled to receive the said State Bonds or either of them. It does not, in terms or by implication, contemplate their receipt, or authorize their sale or pledge when received; but does expressly authorize the sale, by Mr. Rice as President of the first Mortgage Bonds to be issued by the company. Obligations utterly distinct from the State Bonds.

He is authorized to borrow money, purchase rails, rolling stock, &c., and to execute in the name of the company such obligations, &c., as will enable him to accomplish these ends, but the power to part with the State Bonds is not conferred.

II. If, however, such a construction can be given to said resolution, the authority of Rice to pledge, or otherwise dispose of said bonds, was expressly withdrawn from him by the resolutions of the Executive Committee, passed January 23d and February 3d, 1859. (Record, pp. 18 and 19.)

This committee was, by the by-laws of the company, empowered to pass these resolutions (Record, p. 58), and they were expressly ratified by the Board of Directors at its quarterly meeting in May of that year. (Record, p. 60.)

Under those resolutions the bonds were put at the disposal of the Vice-President, Judge Nelson, for a special purpose, and forty-five of them were by him entrusted to Mr. Newton, as hereinbefore stated. He failed to procure the loan he was authorized to obtain upon them, and in consequence of this, forty of the eighty-five bonds were

delivered to Chamberlin, who advanced the required amount of $16,000, by delivering the interest coupons of State bonds, which were, of course, accepted by the State in payment of interest on the first mortgage bonds of the company, by it held. (Record, p. 41-2.)

The Court refused to charge, that if Rice had authority to pledge the bonds by force of the resolution of July 13th, 1858, his power so to do was withdrawn by the resolutions of January 23d and February 3, 1859, and to this refusal the plaintiff excepted. (Record, p. 62.)

The question then is, had he authority from the company, in view of those resolutions, to pledge the bonds for purposes other than those to which the said resolutions, and the action of Judge Nelson thereunder, had dedicted them. In other words, could Rice disregard the express direction of the executive committee upon the theory that he was by the company authorized so to do, and to pledge or otherwise dispose of the bonds at pleasure.

It is respectfully submitted that he could not, and that the Judge erred in refusing to charge as requested, the legal effect of the said two resolutions being for the Court to determine.

III. The plaintiff insisted as stated in the charge (Record, p. 63), that the contract was delivered upon two conditions; one that the contract and transfer of said bonds was not to be binding unless ratified by the company, and the other, that if forty of the eighty-five bonds had been before disposed of, the contract should not be binding; and the Judge charged, that if either one of these conditions was imposed, and not performed, the contract would not be binding unless ratified by the company.

It has been already stated that the president, Mr. Rice, testified that the contract was delivered upon those conditions, and that it had not been ratified; and Judge Nelson swears that the forty bonds had been disposed of before he heard of the contract with the defendant. Opposed to the testimony of Rice, as to the delivery upon condition, was that of Newton only—the owner of the claim of the defendant against the company, and, therefore, a witness to be regarded with distrust, if not with suspicion.

The jury may have believed these conditions were imposed as sworn by Rice, and under the charge of the Judge may have found the contract was ratified by the company, and, if any material part of the charge excepted to upon that question was erroneous, the verdict must be set aside.

In view of this, the Court was requested to charge that there had been no ratification of the contract by the company, aud that the resolution of May 13th, 1859, was not a ratification thereof. These requests were refused, to which refusal the plaintiff excepted (Record, p. 62).

The only proof on the subject of ratification consisted in the action of the Board of Directors of May 13th, 1859, and such action comprised the resolution printed on page 17, and the basis of an arrangement with Chamberlin, with a resolution adopted directing a contract to be framed in accordance therewith (Record, p. 52), all put in evidence by the defendant (Record, pp. 16 & 50).

The law as to what constitutes ratification will be found in 20 Wendell's Rep., page 221–222, 226 to 229, in 4 Selden, page 398, do. 224. and in 9th Peters, 629.

First.—A ratification of a contract necessarily imports a purpose and willingness to be bound by its terms. The resolution of May 13 declares the exact contrary, and directs an agent of the company to procure a surrender of the contract, and a return

of the forty-five bonds, and the order upon the defendant delivered to such agent by the acting president demanded absolute and unqualified delivery of said bonds (Record, p. 19).

The utmost that can be inferred from the resolution is, that to secure their return the company was willing to submit to equitable terms, as they were called, but such is often the case when a controversy exists and propositions are made to buy peace. It might also, with a little plausibility, be argued, from the language of the resolution, in connection with other proof, that Rice had original authority to make the contract, but that is a question totally distinct from the inquiry—was there a ratification of a contract made without sufficient authority?

The Court therefore erred in refusing to charge that the said resolution was not of itself a ratification.

Second.—TheCourt also erred in refusing to charge that there had been no ratification of said contract by the company. The only proof offered on this subject by the defendant, was, as before stated, the proceedings of the Board of Directors of May 13, 1859, consisting of the resolution on page 17 and the basis of the arrangement with Chamberlin, the latter being in its terms and purpose utterly inconsistent with a purpose to ratify the contract, for it disposed of all the bonds in question to Chamberlin, and from him was obtained the $16,000, which, by the contract, was to be furnished by the defendant.

The construction and effect of these recorded proceedings the Court and not the jury was to determine; and the Court therefore erred in refusing to charge that there had been no ratification of the contract.

IV. The Judge in his charge told the jury in

substance, that in order to determine whether there had been a ratification, all that was said and done by the members of the Board of Directors at their meeting of May 13, 1859 (record pp. 66–77), might be considered, and this direction was doubtless correct, and hence he was clearly wrong in refusing to permit the proof offered at page 42 of the record.

To show that all the members of the Board then expressed the opinion that the contract should not be ratified, the witness, Judge Nelson, was asked what each member of the Board said on that subject, and this proof was excluded by the Court below, upon the ground that the only competent testimony on that subject were the minutes of the Board.

It is submitted that this ruling was not only utterly inconsistent with the charge, but that it was clearly erroneous, there being no principle of law or statute prevailing in Minnesota requiring that all proof of proceedings of a Board of Directors, not reduced to writing and entered in the minutes, shall be excluded.

Moreover, on a question of intent to ratify or not, the statements of members of a Board of Directors might be most satisfactory proof, especially in a case like this, where the resolution may possibly be ambiguous, and especially also where nothing has been lost or imperilled by the defendant, upon the faith of any alleged or pretended ratification.

V. The judge erred in leaving it to the jury to determine whether the transfer of the bonds to Chamberlin was a real transaction or a sham. (Record p. 65).

There was no conflict of proof on that subject. The witnesses, without the least contradiction, testified that the bonds were transferred to Chamberlin, in consideration of the indebtedness of the Com-

pany to him, for work performed in constructing its road, he being the sole contractor; and for means advanced, and to be advanced to pay interest, and for other purposes.

And his right to these bonds was also clearly proven by the recorded bases of agreement between him and the company, made and entered in the minutes of the Board of May 13th, 1859, before referred to.

VI. The Court below erred in refusing to charge that on the facts proved, the plaintiff was entitled to recover the value of the bonds with interest.

The title of the plaintiff to them, and their unlawful conversion by the defendant, were clearly proven.

And he, having failed to establish a title to them as against the company, had utterly failed in his defence.

VII. Under the circumstances, as the defendant has paid nothing and performed no act upon the faith of the contract, his exorbitant and unjust claim is entitled to no favor in a Court of justice, which should construe the contract strictly against him. If, therefore, Rice had power to make it, or if the company thereafter ratified it, the right of the defendant to sell or dispose of the bonds never, under the provisions of the contract, existed.

The defendant was notified that the contract, could not be performed by the company before any act had been done by him towards the purchase of iron, or for the sale of the bonds for that purpose. It was not intended by the contract, that they should be sold for that purpose except with the assent and aid of Newton.

They might, however, be sold by the defendant in case the company failed to pay the $16,000, or any deficiency between the amount which might be realized upon a sale of iron by the defendant in the contingencey provided for, and the contract price. That contingency never arose, nor was any part of the $16,000 ever loaned, nor was the defendant ever under any obligation to make such loan, or to buy or furnish iron, until the whole of the eighty-five bonds had been with him deposited. The right to hold or sell them therefore, never arose within the true meaning of the agreement.

VIII. The judgment below should be reversed, and a new trial ordered.

E. W. STOUGHTON,
Counsel for Plaintiff in Error.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

U. S. Supreme Court.

EDWIN A. C. HATCH,
Plaintiff in Error,

vs.

THOMAS B. CODDINGTON,
Defendant in Error.

Brief of Defendant in Error.

This is a writ of error to the Circuit Court for the Southern District of New York, brought by the plaintiff below.

The action was in trover for the conversion of forty-five State bonds of Minnesota, and the verdict was for the defendant.

Both parties claimed the bonds under the Minnesota & Pacific Railroad Company, to which company the bonds had been issued by the State of Minnesota under a provision of its State Constitution authorizing the issue of such bonds "for the purpose of expediting the construction" of certain railroads (*Ev.* 11, *p.* 26).

The plaintiff claimed title by the following transfers both dated May 13th, 1859, (*pp.* 8, 9) :

"For value received we, the Minnesota & Pacific Railroad Company hereby sell, assign, transfer and set over to Selah Chamberlain and his assigns, forty-five bonds for one thousand dollars each, issued by the State of Minnesota to us, and now in the hands of Thomas B. Coddington & Co., of the city of New York, and authorize and empower him to have and receive the same.

"In witness whereof, we have caused these presents to be signed by our president, Edmund Rice, and attested by our secretary, James W. Taylor, and our corporate seal to be thereto affixed, this 13th day of May, in the year one thousand eight hundred and fifty-nine.

[SEAL.]

"EDMUND RICE,
"President.

"Attest.
"JAMES W. TAYLOR,
"Secretary."

"ST. PAUL, May 13th, 1859.

"For value received, I hereby assign, transfer and set over unto Edwin A. C. Hatch, the forty-five Minnesota State R. R. bonds of the denomination of one thousand dollars each, now in the hands of T. B. Coddington & Co., of the city of New York, and all my right, title and interest therein, being the bonds issued by the Minnesota & Pacific Railroad Company, and transferred by said company to me.

"S. CHAMBERLAIN."

Both these transfers describe the bonds as "now in the hands of T. B. Coddington & Co., of the city of New York," which was defendant's firm. *They were*

never in plaintiff's possession, under any claim of title and such title as he had was later in date than defendant's.

The bonds had been deposited with defendant's firm as security for the obligations of a contract to purchase railroad iron, made with the firm by the company, on the 21st April previous, which is set out at *pp.* 12, 13.

The plaintiff attacked this contract, and the deposit of the bonds in connection with it (1). As having been executed by Rice, the president of the company, without authority; and (2), As having been only conditionally delivered, and consequently as having never in fact taken effect.

At the date of its execution, Rice was president of the company, Rensselaer R. Nelson was vice-president; William H. Newton, and Edwin A. C. Hatch, the plaintiff, were directors.

The contract was negotiated by Newton in concert with Rice, both being at the time in New York. As evidence of his authority to make the contract Rice gave to Newton, to hand to T. B. Coddington & Co., the charter of the company, copies of Legislative acts and of the provision of the constitution authorizing the bonds, and a resolution of the Company vesting the president with certain powers (*p.* 47, *fols.* 121, 122).

The resolution is set out in full as *Ex.* 10, at *p.* 31, and the court held it was broad enough to sustain the contract, if the contract was in fact made. See plaintiff's *first request*, *p.* 61, *fol.* 160, and the charge *fol.* 163.

The plaintiff also contended that if originally sufficient, the powers given by the resolution were withdrawn by the action of the executive committee of the directors in January and February, 1859, appropriating the issue of bonds of $100,000, which had just been received from the State, and of which the forty-five in question were a part, to a particular purpose, and directing R. R. Nelson, as acting president, to dispose of them accordingly. These resolutions are at *p.* 18, *fols.* 41, 2. This view the court rejected. *Second* request, *p.* 62, *fol.* 161; the charge *fol.* 163.

These resolutions were never brought home to defendant, nor was he ever aware of the special agency which for a short time Newton held under them in the March previous shown by *Exs.* D and E, *pp.* 9, 10.

The plaintiff gave testimony to show that the contract was never absolutely delivered. The evidence on this point was conflicting, and took a wide range. The contract provided not only for a purchase and sale of iron, but also for an advance by T. B. Coddington & Co., of $16,000 to the Company on its notes, and the Company was to deposit as security *eighty-five* bonds (*p.* 12 *fol.* 26,) but had in New York at the time the contract was executed only the *forty-five* in question.

The contract was made in duplicate and was signed on the part of the Company, by Rice the president in his room at the St. Nicholas Hotel, New York, he being ill at the time, and at the same time were signed three notes for the $16,000. (*Ex.* 2 A, 2 B and 2 C. *pp.* 14, 15). Rice received one of the contracts, and a letter of credit authorizing drafts for the $16.000; (*Ex* 3, *p.* 14 *fol.* 31); the other contract and the notes, were delivered to T. B. Coddington & Co. The bonds were delivered with the following letter, (*Ex* 2. *p.* 13).

ST. NICHOLAS HOTEL,
New York, 21 April, '59.

MESSRS. T. B. CODDINGTON & CO.:

Dear Sirs—In conformity with an agreement made with you this day, I hand you, by Mr. Wm. H. Newton $45,000 of Minnesota State Bonds, and will send you, without delay, a further amount of $40,000 of like description State bonds, as collateral and for negotiations as per same agreement.

I also hand you our three notes, bearing this date, at six months, with interest at 7 per cent.—one for $6,000 and two $5,000 each, in all $16,000, against which you will please grant a letter of credit for $16,000, in favor of Wm. H. Newton, stipulating that on your receiving the remaining $40,000 of bonds above re-

ferred to, you will accept drafts drawn by him at one day's sight on you.

I am, yours, respectfully,

EDMUND RICE,

Prest. Minnesota & Pacific R. R. Co.

Notwithstanding this written evidence of the terms of the delivery and exchange of the papers, the court allowed Rice to testify that he gave Newton the papers to be left with T. B. Coddington & Co., "but not to take effect unless ratified by the Board of Directors, nor if Judge Nelson had disposed of the forty bonds then supposed to be in his hands" (*p.* 22, *fol.* 51).

There was no evidence that any condition affecting the delivery was brought home to defendant or to his firm. He testified that the papers were exchanged absolutely, he being represented by his clerk, Douglass (*p.* 11, *fol.* 25), and Newton testified (*p.* 49, *fols.* 125–6), that there was no condition of any kind in reference to the delivery.

The court adopted the view of the law claimed by plaintiff on the question of conditional delivery, and instructed the jury as requested. (*See third request, p.* 62, *fol.* 161, *p.* 67, *fol.* 175), and as matter of fact, therefore, the verdict established that the delivery was unconditional.

The contract, the three notes, the letter of credit and the letter undertaking to send forty more bonds (*pp.* 12–15), were all executed April 21, 1859. Rice & Newton at once telegraphed to Nelson, at St. Paul "interest on State bonds provided for, and a thousand tons of iron purchased" (*p.* 29, *fol.* 72; *p.* 49 *fol.* 127; *p.* 42, *fol.* 107), and started for that place the next day, where they arrived on or before, the 29th April. On that day they attended a meeting of the board, and on the 30th, the 6th of May, and the 9th, 10th, 11th, 12th and 13th; the proceedings at these meetings are set out at *pp.* 50–54.

On the 30th of April Rice wrote to defendant the following letter, which was the first communication he sent after leaving New York for St. Paul (*Ex. F., p.* 15).

OFFICE OF THE MINNESOTA & PACIFIC R. R. Co.,
St. Paul, April 30th, 1869.

Gentlemen—I found, upon my arrival here, that the acting president of this company had disposed of the 40 Minnesota State Bonds, which were to have been forwarded to you by the terms of the contract made between us in New York. You will perceive, therefore, that it is impossible for the company to comply with its undertaking. Some action of the Board of Directors will be had upon the subject, of which I shall take pleasure in advising you at the earliest moment.

Very respectfully,
Your obedient servant,
EDMUND RICE,
Prest. Minn. and Pacific R. R. Co.

T. B. CODDINGTON & Co.,
New York.

In the proceedings of the board there was no action adverse to the contract as having been unauthorized, or not consummated, and on the 17th of May Rice wrote a letter, enclosing a copy of the resolution of the board, as set out at *pp.* 16–17, *Ex.* 4 *and* 4 *A.*

These papers and some subsequent correspondence were received in evidence without objection as bearing on the disputed qnestion whether the delivery was in fact conditional, and also as showing, if it was, a ratification of the president's acts, and a waiver of the condition.

The plaintiff requested the court to charge as matter of law that there had been no ratification (*Fourth* and *Fifth* requests, *p.* 62). The court refused so to charge, but left the evidence of the conduct of the company and its officers to the jury, with the instruction however requested by the plaintiff (*Sixth* request, *p.* 62) that "to constitute ratification there must have been a direct sanction of the contract by the board of

directors, or conduct or acts, or a resolution or resolutions inconsistent with any other supposition than an assent to such contract by said board" (*page* 67, *fol.* 176).

The court also left the evidence of the conduct of the company and its officers, after the date of the contract, to the jury as bearing "upon the question whether either of the conditions * * * were impressed upon the contract, so as to make the delivery conditional and dependent upon the fulfillment of the conditions * * * as having a proper bearing as evidence upon the fact whether the condition was imposed."

To this instruction the plaintiff excepted (*p.* 66, *fols.* 173–4).

Some other exceptions will be noticed in connection with the points made in respect to them.

After the breach of the contract by the railroad company, Coddington & Co. brought an action to liquidate the damages caused by such breach, and to foreclose the interest of the company in the bonds left with them as security. The judgment in this action was set up as a bar by the defendant's second plea (*pp.* 3, 4). Plaintiff demurred on the ground that the plea showed no privity between him and the railroad company, and also on the ground that it amounted to the general issue (*p.* 5).

The plea was probably bad on the latter ground, and the demurrer was sustained, but as judgment passed for the defendant below on the verdict under general issue, it is supposed that no question arises, in error, in relation to this special plea. For the same reason the record in that suit and its exclusion do not appear in the bill of exceptions.

But it appears, by plaintiff's testimony, that the action by Coddington & Co. was brought, in October, 1859, by service of process on Rice, as president, (*p.* 33, *fols.* 81–2); that an appearance was entered (*p.* 7, *fol.* 15, *p.* 34, *fols.* 84–5), and that Rice, Nelson, and Hatch,

the plaintiff, were all examined as witnesses on the part of the company (*p.* 35, *fols.* 86–7; *p.* 44, *fol.* 113), and that the first step taken by Hatch to assert any title to the bonds was after judgment had passed against the company. His alleged title dated from May 13, 1859 (*Ex. B.*, *p.* 9); the action against the company was commenced in October, 1859, and the demand on which this action is based was not made till October, 30, 1860. The reply of defendant to that demand was that the case against the company had been decided in his favor (*p.* 7, *fol.* 14).

It is apparent that the question as to the validity of the contract under which defendant held the bonds was tried in that action, and that plaintiff below, who knew of its pendency, who was a director of the company when the contract was made, and who was a witness in the action, kept back his claim till after the decision in that case.

I.—The contract of April 21, 1859 (*pp.* 12, 13), was within the powers of the president to execute, as conferred by the resolution of the board (*Ex.* 10, *p.* 31), and the documentary evidence furnished by Rice to Coddington & Co. of his authority to make the contract, justified them in believing that he had such authority.

Rice testified that he handed Newton, to furnish to Coddington & Co., a copy of the resolutions of July 13, 1858, and also a copy of the loan bill under which the bonds were issued (*p.* 26, *fol.* 61; *p.* 28, *fol.* 67), and Newton specified particularly the papers furnished (*p.* 47, *fols.* 120, 121).

The loan bill authorized the issue to the railroad company of State bonds, "for the purpose of expediting the construction" of the road, made them "transferable by the endorsement of the president," and re-

quired as security for the payment of them by the company, and of the interest accruing on them, the deposit of a corresponding amount of the first mortgage bonds of the company (*pp.* 27–7). It became operative as a law the 5th of May 1858, and the companies availing themselves of its provisions were to notify the governor of the State, and within sixty days commence operations, and within two years have fifty miles of road ready for superstructure. The bonds were to be issued in amounts of $100,000 for every ten miles of road ready for rails, and another $100,000 for every ten miles fully completed (*p.* 26).

The bonds were to be used to enable the company to build its road, and might therefore properly be used in the borrowing of money, in the purchase of rails, or in the payment for construction. On the 13th of July, 1858, after the loan bill had become a law, the board of directors passed a resolution, which, after reciting that the interest of the company required "that no default in the performance of the conditions under which the credit of the State of Minnesota *has been loaned to this company* shall occur, and that means shall be promptly provided *with the aid of said loan of State credit*, to construct one hundred miles of road at an early day," proceeded to empower Rice, the, president (1), to dispose of the first mortgage bonds of the company, (2) to borrow money, (3) to purchase iron (*pp.* 31–2).

The bonds were transferable by endorsement of the president; he did endorse them, and assumed to deliver them with authority. "I hand you by Mr. Wm. H. Newton forty-five thousand dollars of Minnesota State bonds (*p.* 13, *fol.* 30).

He also claimed in executing the contract to be acting within the powers conferred by the resolution: "In witness whereof the parties hereto have executed these presents, the said Minnesota & Pacific Railroad Company by their president, duly authorized by resolution of the board of directors of said company" (*p.* 13, *fol.* 30).

It was claimed by the plaintiff below that the resolution which invested the president with the powers he professed to exercise, was to be construed as relating wholly to the negotiation of the first mortgage bonds of the company. But that power was only one of several conferred by the resolution. The power to borrow money was an independent power. The president was not to borrow money with the avails of the mortgage bonds, nor was he so limited in his power to purchase iron. He was first given the right to sell, loan or pledge the mortgage bonds of the company; if he succeeded, he would of course get money either by sale or by mortgage or pledge of the bonds. Then came the power to borrow money, as a distinct power, not on the mortgage bonds, as that was previously given, nor with the money already borrowed on them, which would be an absurdity, but clearly *on any security the company might furnish him with.* This general power to borrow money cannot be restricted to borrowing by use of the mortgage bonds, and still less can the power to buy rails, locomotives, cars, &c., be so restricted. This is also an additional power, separated in the order of enumeration from the power to dispose of the mortgage bonds, by the distinct power to borrow money.

It was also claimed that because this particular issue of 100 state bonds was not in existence at the date of the resolution of July 13, such bonds could not be considered as embraced in it. But the resolution was a general one, conferring powers to be exercised in future, and operated to enable the president to use, in acting under it, any securities the company might place in his hands. The bonds in question were part of a *fifth* issue of $100,000 each. The earlier bonds had been used with the contractor who was building the road (*p.* 24, *fol.* 56). The bonds were issued as the road progressed, and it was certainly not necessary to pass a new resolution to cover each issue of bonds merely to remove a discrepancy between the date of the

bonds and the resolution, if the subject matter of the resolution was broad enough.

The company which invested Rice with the broad powers contained in the resolution, to borrow money, and buy iron and rolling stock, should not be allowed to plead that the powers it gave were vague or ambiguous. As against the company the power should be construed as any one dealing with the president, might under the circumstances, fairly understand it, and also as authorizing the usual means of executing it.

See *Le Roy* vs. *Beard*, 8 *How.* 451, 468; *Sandford* vs. *Handy*, 23 *Wend.*, 260; *Nelson* vs. *Cowing*, 6 *Hill*, 336.

II.—The powers of Rice, the president, were not withdrawn or restrained by the resolutions of the executive committee of January 23, 1859, and February 3d, 1859 (*pp.* 18, 19).

These were simply an authority to Nelson, as acting president in the absence of Rice, to dispose of the bonds. Had he done so it may be conceded his transferree would have obtained a good title, but the authority was concurrent with that given to Rice, and did not revoke it.

Besides, it was the act of a sub-committee of the board, which could not revoke the action of the board itself.

If intended as a revocation, to any extent, of Rice's powers, it was a private revocation, not brought home to the parties dealing with the agent first appointed.

Where a corporation confers on an agent powers in writing upon the faith of which third persons deal with him, a private revocation or limitation of the powers so conferred cannot avail the corporation. *Story on Ag.*, § 470; *Lightbody* v. *N. Am. Ins. Co.*, 23 *Wend.*, 18.

It is noticeable in this connection that the only title that plaintiff made to the bonds was by a transfer also executed by Rice. (*Ex. A.*, *p.* 8, *fol.* 18). The contract executed by Rice, under the seal of the company, on the 21st April, 1859, under which Rice actually delivered the bonds to defendant, is attacked on the ground that Rice had no power over the bonds, seeing that the Executive Committee had entrusted them to Nelson for a special purpose. Yet plaintiff claims not under Nelson, or the Executive Committee, but under the same Rice, whose powers are not shown to have been enlarged between the 21st April, the date of the transfer to defendant, and the 13th of May, the date of that to Chamberlain.

No authority of the Board was shown for the transfer, under which the plaintiff claimed. It may be surmised that the 45 bonds referred to in a new arrangement with Chamberlain, made on the 13th May, were those in suit; but, if so, the transfer was in direct violation of that arrangement, which was as follows: "The present debts of the company, incurred for the right of way and current expenses, to be provided for by placing 45 State bonds in the hands of a trustee to be converted into money, and the proceeds applied in the payment of the debts, or that satisfactory guarantee shall be given by Chamberlain to Judge Nelson that the warrant therefor shall be paid within sixty days" (*p.* 52, *fol.* 134, *sub.* 6).

There was no evidence that this provision related to the bonds in question. Nelson, the director who was to be guaranteed that the bonds should go to pay the debts, on the next day, May 14th, wrote to defendant and described the bonds for which this action is brought, as bonds "belonging to the railroad company," (*p.* 19, *fol.* 43,) whereas, if transferred at all to the plaintiff, they had been so transferred the day before, first to Chamberlain and then by him to Hatch. It is difficult to suppose that Nelson knew anything of these transfers.

On the case, therefore, plaintiff's title was under transfer by the president, under the seal of the company, on the 13th of May, who was not shown to have received from the company any larger powers over the bonds than he had on the previous 21st April, when he transferred them to defendant.

III.--If the formal authority of the president to make the contract was sufficient, the points open to the plaintiff in error on the question whether the contract was in fact made, are not well taken.

This involved the issue whether the contract was in fact delivered to take effect as a contract, or whether its taking effect was dependent on its approval by the Board, or on there being still undisposed of the 40 bonds that were to be added to the 45 delivered in New York.

If there was no condition imposed when the papers were exchanged to prevent the contract taking effect, then no question arises.

But if there was, the plaintiff claimed that the court should charge, as matter of law, that there was no ratification, and that the resolution of May 13th was not a ratification. (*Fourth* and *fifth* requests, *p.* 62). This the court refused to do, but left the question of ratification to the jury under the instruction claimed by plaintiff in error.

This was the utmost that plaintiff was entitled to.

The contracts had been exchanged in duplicate. Rice had received for the company Coddington & Co.'s letter of credit authorizing the company to draw for $16,000, and had made delivery of the 45 bonds by the letter of April 21 (*pp.* 13, 14). The only evidence that there was anything conditional about this exchange of papers was the testimony of Rice contradicted by that of Newton.

not made to me and then another made by me to Hatch was to avoid multiplication of papers" (*p.* 37, *fol.* 92.)

The consideration then, of this disposal of bonds issued to the company to aid in the construction of its road, was private transactions between Chamberlain and the president, and between the president and the plaintiff, a director.

(3.) It was also questionable whether the transfers were made at the time, or whether the papers had not been dated back.

The transfers, if made on the 13th of May, as they bear date, conflict with Nelson's letter of the 14th (Ex. 6, *p.* 19), which speaks of the bonds as belonging to the company; with the appointment of Newton on behalf of the company to procure a surrender of the bonds (Ex. 4, *p.* 18), and with Rice's letter of the 17th May (Ex. 4, p. 16).

If Hatch were in reality the assignee of the bonds on the 13th May, 1859, why did he not notify Coddington & Co., and make claim for them? He was a director of the company, knew of the contract, and of Coddington & Co.'s position.

The court was, therefore, justified in leaving the question of the integrity of these transfers to the jury, whether they showed "a *bona fide* real transaction or a sham" (*p.* 65, *fols.* 169, 170). The exception to this portion of the charge was not well taken.

It is true that the general rule is that in trover, the defendant cannot attack the plaintiff's title, but must succeed upon his own, but this rule only applies where the plaintiff has shown himself once in possession. (*Duncan* v. *Spear*, 11 *Wend.*, 54; *Rotan* v. *Fletcher*, 15 *Johns*, 207). A title by possession being sufficient to maintain the action, the defendant cannot succeed by showing title out of the plaintiff, unless he connects himself with such title. But a mere stranger cannot put a defendant who is in possession to the defense of his own rights. He must show a *prima facie* right, and if that

prima facie right is a mere paper title, without possession, it can be disproved. It certainly cannot be contended that the defendant could not have shown, if such had been the fact, that the transfers under which plaintiff elaimed were forgeries.

The plaintiff attempted to make title under a corporate transfer, without showing authority in the president who affixed the seal. But the president, as such, has no power, unless authorized by the directors to transfer the assets of the company, and his attempt to do so is a nullity.

Hoyt v. *Thompson*, 1 *Seld.*, 320, 334.

V.—The exception at *p.* 17, *fol.* 39, was not well taken.

Plaintiff had attempted to show that defendant had done nothing to execute the contract (*p.* 15). This was immaterial, indeed; but defendant was entitled to show in answer to such evidence that he was able to perform it.

If the contract was a binding one, defendant was entitled to at least nominal damages on its breach; and the company, as the party in fault could not have maintained trover, without tendering such damages. But in reply to evidence by the plaintiff that nothing had been done, defendant was entitled to show that the damages for which the company was liable were substantial. The plaintiff himself opened the door to the evidence to which he objected.

VI.—The exception at *p.* 12, *fol.* 25, 6, was not well taken. The plaintiff was attempting to prove a con-